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No. 90-____

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1990

IN RE: GAYLE E. SLAUGHTER Petitioner

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

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QUESTIONS PRESENTED

1. Where indirect criminal contempt of court charges were initiated by the state supreme court in retaliation for pursuing a constitutionally protected activity (filing a petition for writ of certiorari on behalf of her client in the United States Supreme Court and reporting, in state court, the criminal acts of cronies of the state court), whether an attorney is entitled to:

a) Reasonable or specific notice of the charge and proposed sanctions.
b) Compulsory attendance of material witnesses and production of documentary evidence to enable her to present a defense.
c) An opportunity to be heard in defense before punishment is imposed.
d) A fair and impartial hearing or trial [state supreme court justice's conflict of interest; bias of other justices].

2. Whether a state supreme court had jurisdiction and/or authority to conduct contempt of court proceedings against an attorney where said proceeding was initiated without probable cause in retaliation for pursuing said constitutionally protected activity and conviction was entered without sufficient evidence.

3. Whether the Order of the Supreme Court of Kentucky holding an attorney in contempt of court constitutes:

a) An arbitrary and capricious abuse of discretion.
b) A clearly erroneous decision which is unfounded in the facts and law of the case [conviction based upon insufficient evidence].
c) Disparate treatment of the attorney due to race and sex, an African American female, considering other litigants similarly situated as to facts and law.

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IN THE
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IN RE: GAYLE E. SLAUGHTER **Petitioner**

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Petitioner, Gayle E. Slaughter, prays that a writ of certiorari be issued to review the judgment of the Supreme Court of Kentucky.

CITATION TO OPINIONS BELOW

The following Orders of the Supreme Court of Kentucky are reproduced in the Appendix to this petition as indicated:

- An Order dated October 18, 1989, Appendix 1a.
- An Order dated June 27, 1990, Appendix 2a.
- An Opinion and Order dated June 28, 1990, published as *Fritz v. Barker*, 37 K.L.S. 8 [7/5/90], Appendix 3a-5a.
- An Order dated October 9, 1990, Appendix 6a.
- An Order dated December 27, 1990, [Vance, J., ***dissenting***, states "... I would grant reconsideration of the entire issue."] Appendix 7a.

JURISDICTION

The judgments sought to be reviewed were entered on June 27, 1990 and June 28, 1990. Timely motions for reconsideration were filed and disposed of simultaneously by Order dated December 27,

1990.[1]

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(3). This Court is further advised that 28 U.S.C. Section 2403(b) may be applicable because the constitutionality of a state statute (**as applied or enforced**) is questioned.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following provisions of the United States Constitution: (1) *FIRST AMENDMENT*, which states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assembly, and to petition the government for a redress of grievances;" (2) *FIFTH AMENDMENT*, which states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation;" *(3) SIXTH AMENDMENT*, which states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of

[1] An Order dated October 9, 1990 (Appendix 6a) changed the case name/style from *Fritz v. Barker* to *In RE: Gayle E. Slaughter* and suspended the effectiveness of the Order dated June 27 and June 28, 1990, pending disposition of timely motions to reconsider.

the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence;" (4) *NINTH AMENDMENT*, which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people;" (5) *FOURTEENTH AMENDMENT*, Section One, which states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The following statutes or constitutional provisions of the Commonwealth of Kentucky are involved, and the pertinent text of each is set forth in the Appendix pursuant to Rule 21.1(f): **Kentucky Rules of Court, Civil** (hereafter "**CR** ___") 8.04; CR 75.07(5); CR 76.12(1); CR 76.12(2)(a,b); CR 76.32(a,b); CR 76.36(7); CR 76.36(7)(h); **Kentucky Revised Statutes** (hereafter "**KRS** ___") 26A.015; **Kentucky Supreme Court Rule** (hereafter "**SCR** ___") 1.020(1)(b); SCR 3.130 [involving **Disciplinary Rule** (hereafter "**DR** ___") 1-102; DR 1-102(A)(1, 4,5,6); DR 1-103(b); DR 7-101(A)(1); DR 7-102(B)(2); DR 8-101]; SCR 4.300 [Canons 1, 2, 3A(4), 3C(3)(b), 5D(1)]; Sections 109, 111, 116, and 121 of the **Kentucky Constitution** (hereafter "**KC**").

STATEMENT OF THE CASE

Petitioner, Gayle E. Slaughter (hereafter "Slaughter"), is an attorney licensed to practice law in the Commonwealth of Kentucky. On October 18, 1989, the Supreme Court of Kentucky issued an Order [hereafter "**show-cause order**"] (reproduced herewith as Appendix 1a; such reproduction hereafter denoted as "**Appendix** ___"), requiring that Slaughter: "... shall appear before this Court on December 12, 1989 at 2:30 p.m. to show cause why she should not be held to be in contempt of this Court or sanctioned for the Petition For Rehearing she filed on behalf of

appellant."

The show-cause order did **not** provide reasonable, adequate or specific notice of what Slaughter was being charged with. The said **Petition For Rehearing**[2] (hereafter **"PFR;"** Appendix 35a-56a) was timely filed and strictly conformed to all requirements of the Kentucky Rules of Court, Civil Procedure. The basis for filing the PFR was well grounded in the facts and law of the case. Slaughter used proper legal terminology throughout the brief and never resorted to name-calling. The petition was never alleged nor found to have been frivolous. Furthermore, the PFR was never found to have contained false, immaterial or scandalous statements.

The show-cause order was issued in **retaliation for** pursuing a constitutionally protected activity (**filing a writ of certiorari** on behalf of her client in the United States Supreme Court; **and** for **reporting,** in state court, the **criminal acts of cronies of the state court**) pursuant to Slaughter's client's First Amendment right to petition the government for a redress of grievances and Slaughter's own federal rights to practice law as set forth in this petition.

The true purpose of the show-cause order was revealed by the Court's opening remarks at the December 12, 1989 **show-cause hearing** (hereafter **"hearing"**), stating, in pertinent part:

> "JUSTICE GANT: ...And, this entire document[3] together with **certain other documents that appeared in the *United States Supreme Court*,[4] in which allegations were made concerning**

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[2] Filed 4/6/89, regarding Memorandum Opinion of the Court entered on 3/16/89 in *Fritz v. Barker*.

[3] *Fritz v. Barker* Petition For Rehearing (PFR), see Appendix 35a-56a.

[4] Slaughter appeared as counsel of record in *Fritz v. Barker*, Supreme Court of the United States, Case No.(s) 89-5764 [docketed on September 26, 1989], 88-6785 [docketed on March 7, 1989], and 88-6618 [docketed on February 13, 1989].

> the Chief Justice of this Court[5] give a general tenor that this Court finds hard to explain, even in the position of advocacy that you find yourself in. What is your answer to those accusations and comments contained in that Petition For Rehearing?"
>
> "MS. SLAUGHTER: In all fairness, I am having a difficult time understanding just what the problem is. ..." [quoted from December 12, 1989 **hearing transcript** (hereafter "**Transcript**"), Appendix 8a-34a, at 9a, emphasis added.]

During the hearing, on **direct examination** of Slaughter, the Court **placed** the following matters ***in issue*** and then summarily denied Slaughter the right to compulsory attendance of witnesses and discovery of documents probative to the issues **raised by** the Court, which included:

- Whether the PFR [Appendix 35a-56a] was contemptuous "in its entirety."
- Whether anything written about Barker, Darsie or Stephens was "scurrilous."[6]
- Whether the conduct of Barker and Darsie was "statutorily criminal."
- Whether it is contemptuous to use the term "statutorily criminal" (an objective legal description) to refer to conduct that is, in fact, statutorily criminal.

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[5] Robert F. Stephens is the Chief Justice of the Supreme Court of Kentucky and a voting member of the UK Board of Trustees, the real party in interest.

[6] The Court referred to Slaughter's having reported the criminal acts of Darsie and Barker (under an affirmative duty to do so) as "scurrilous" (Transcript, pp. 14, 26, 29, 30, 31, and 33 at Appendix 14a, 21a-25a). The Court's bias against Slaughter is evidenced by this remark and others because in Kentucky, statements made in privileged forums (e.g., court) are absolutely privileged, even if false and malicious. *See Hayes v. Rodgers*, 447 S. W. 2d 597 (Ky. 1969); *Massengale v. Lester*, 403 S. W. 2d 701 (Ky. 1966).

- Whether Barker's conduct evidenced actual malice and a retaliatory spirit against Appellant, Fritz.
- Whether, in the Court of Appeals and the Supreme Court of Kentucky, the use of the words "actual malice" and "retaliatory spirit" (to refer to *nonjudicial* actions of Barker, a *circuit* judge) were contemptuous.
- Whether the facts of record proved that: Barker and Darsie's conduct was "statutorily criminal" [criminal obstruction of justice]; that Darsie and UK have a notorious reputation for perpetrating fraud upon various tribunals; that Darsie's certificate of service was falsified; that Linda Haulk's affidavit was perjured), *and* whether there existed judicial admissions by silence regarding these facts.
- **Whether it was contemptuous to write the following verbatim material in the PFR** [Appendix 35a-56a]:

  "This Court also overlooked the material facts contained in the record which prove that the conduct of George E. Barker and John Darsie rises to a level that is statutorily criminal ..." [PFR, pp. 5-6, ¶ 17; at Appendix 40a]

  "Actual malice and a retaliatory spirit against the Appellant appears on the face of the record where Judge George E. Barker suggested that contempt proceedings ought to be brought against the Appellant for no other reason than the fact that Appellant had sought Barker's recusal. Barker's suggestion was made by reference to an irrelevant and defunct statute (KRS 23.230) with Barker stating that such contempt proceedings were not allowed under KRS 26A.015 [the controlling law]."

[PFR, p. 6, ¶ 18][7]

"The Appellees did not respond to the Appeal (Supreme Court of Kentucky file No. 88-SC-593) nor did they deny any of the allegations made therein, thus constituting a judicial admission of the truth of said allegations of criminal wrongdoing." [PFR, p. 6, ¶ 20, at Appendix 40a-41a]

"In the record, it is both *proven and undenied* that Mr. Darsie and the Respondent real party in [sic] interest, the University of Kentucky, have a notorious reputation for perpetrating fraud upon various tribunals, to wit: [citation to state record omitted]." [PFR p. 7, ¶ 26, at Appendix 41a-42a]

"Because Mr. Darsie's guilt appears on the very face of the record on appeal, the burden of going forward with evidence to refute the allegations of falsifying his certificate of service and submitting a perjured affidavit has shifted to the respondents ... [citation of state law omitted]." [PFR, p. 8, ¶ 27, at Appendix 42a]

During the hearing, Slaughter tendered to the Court her "Objections In Response To Order To Show Cause" which was written prior to the hearing (and before bifurcation of *Fritz v. Barker* and *In RE: Gayle E. Slaughter*) and in response to the plain meaning of the order because the show-cause order [Appendix 1a] reads as though Slaughter was being summonsed for the mere filing of the PFR. At that point, Slaughter did not know the exact

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[7] Neither in the show-cause order [Appendix 1a] or at the hearing did the Court charge Slaughter with contempt based upon the content of the above paragraph (¶ 18). Consequently, she had no reasonable, adequate or specific notice of the charge; yet, the Court found Slaughter in contempt based upon said ¶ 18 (see Appendix 40a).

nature of the charges against her and responded by showing that the rules of court permitted **the filing** of the said PFR. Further, she timely objected to the proceeding by **affirmatively asserting a federal constitutional challenge** (discussed *infra, How The Federal Questions Were Raised And Decided Below*).

During the continuation of the hearing, Slaughter:
(a) Timely filed (on February 15, 1990) a supplemental **"Response To Request"** (hereafter **"Response"**) in which she renewed her federal constitutional challenges to the proceeding and diligently traced the objective facts being ignored by the Supreme Court of Kentucky (Response, pp. 1-16); **(b)** Timely filed (on February 22, 1990) a Motion For Discovery seeking **compulsory attendance of witnesses** and subpoenas for documents in her favor pursuant to her federal right to Due Process.

On June 27, 1990, an Order [Appendix 2a] was entered which **summarily denied Slaughter's motion for discovery and compulsory attendance of witnesses** in her favor on the purported basis that "the show-cause order in question pertains solely to the PFR contained in the record on appeal."

On June 28, 1990, an Order (Appendix 3a-5a) was entered which held Slaughter in contempt of court and imposed a $500 fine plus costs.

On December 27, 1990, the Court simultaneously denied Slaughter's separately filed Petitions for Reconsideration of the Orders dated June 27 and June 28, 1990. [Appendix 7a]

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Slaughter timely and affirmatively raised her federal questions squarely in the Supreme Court of Kentucky, where the instant case originated. First, at the hearing on December 12, 1989, Slaughter tendered to the court her **"Objections In Response To Order To Show Cause,"** (hereafter **"Objections"**) which averred: **(1)** disparate treatment under the facts and law in violation of the federal constitution [Objections, p. 6, ¶ 11], **(2)** objected to

Stephens' appearance in the case [Objections, p. 7, ¶ 13], and (3) stated, in part:

> "... The federal rights of both John Fritz and his attorney, Hon. Gayle E. Slaughter are violated by the Order dated October 18, 1989. As to the Appellant, John Fritz, as well as his counsel, Hon. Gayle E. Slaughter, **the Order** to show cause dated October 18, 1989, **renders** CR 76.32(a,b), SCR 1.020(1)(b), SCR 3.130 [DR 1-102, DR 1-102(A)(1,4,5,6), DR 1-103(b), DR 7-101(A)(1), DR 7-102(B)(2), DR 8-101, SCR 4.300 [Canons 1, 2, 3A(4), 3C(3)(b), 5D(1)], Kentucky Constitution Sections 109 ..., 111 ..., 116 ... and 121 ... **all unconstitutional and void as applied and/or enforced by reason of repugnancy to (and in violation of) the following provisions of the United States Constitution**, to wit: ... [citing the First, Fifth, Ninth and Fourteenth (section one) Amendments to the United States Constitution and quoting the pertinent text of each verbatim]." [emphasis added; Objections, pp. 8-9, ¶ 17] [**Similar wording** in other documents discussed herein shall be **referred to hereafter as** the "**Rights Clause**".]

During the continuance of the hearing, on February 15, 1990, Slaughter timely filed a supplemental "Response To Request" in which she averred the Rights Clause to again raise and preserve her constitutional challenge. [Response, pp. 15-16, ¶¶ 30-31]

In her Motion For Discovery timely filed (February 22, 1990) during the continuance of the hearing, and ruled upon by the Court, Slaughter: **(a) requested** discovery of documents and **compulsory attendance of witnesses** in her favor [Motion For Discovery, p. 1, ¶¶ 1-2]; **(b)** argued for **procedural due process** including conduct of a "trial-type adjudicatory hearing" (Motion For Discovery, pp. 3-5, ¶¶ 3-10; citing the Fifth and Fourteenth Amendments to the United States Constitution, at p. 4, ¶ 8).

The said Motion for Discovery was Slaughter's <u>first opportunity to assert her right to discovery and compulsory attendance of witnesses because</u> she did not learn the nature of the allegations

against her with until she attended the hearing. During the hearing **the Court raised issues** that Slaughter could have defended through compulsory attendance of witnesses and subpoenas for documentary evidence **if** the court had given her reasonable, adequate or specific notice of what she was being charged with.

On July 10, 1990, Slaughter timely filed a **"Motion to Reconsider"** the June **27**, 1990 Order (hereafter **"Motion to Reconsider"**] which **denied her right to compulsory attendance of witnesses** and discovery. The said Motion to Reconsider was Slaughter's first opportunity to object to the court's refusal to grant compulsory attendance of witnesses and discovery and again averred her Rights Clause,[8] thereby raising and preserving her federal constitutional challenge.

Slaughter affirmatively averred that the Order dated June **27**, 1990: **(a)** "is an arbitrary and capricious abuse of discretion," **(b)** "is clearly erroneous as unfounded in fact and law," **(c)** "Treats Ms. Slaughter disparately from other litigants similarly situated as to law and fact cited herein," and **(d)** "Renders Ms. Slaughter's client without effective assistance of counsel." [Motion to Reconsider, p. 3, ¶ 9]

On July 10, 1990, Slaughter also timely filed a **"Motion to Reconsider..."** the June **28**, 1990 Order (hereafter **"Motion to Reconsider Contempt"**) and this was her first opportunity to object to the Court's **findings** and to renew other objections, including her federal constitutional challenge. Slaughter **averred** the following legal points and **constitutional rights** regarding the said Order finding her in contempt:

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[8] Citing the First, Fifth, Sixth, Ninth, and section one of the Fourteenth Amendments]. [Motion to Reconsider, pp. 3-4, ¶ 10]

- Lack of subject matter jurisdiction[9] due to usurpation of the Court of Appeals' jurisdiction. [Motion to Reconsider Contempt, pp. 1-2, ¶ 1)
- Lack of reasonable, adequate or specific notice of what rule of court Slaughter purportedly violated or otherwise what she was charged with. [Motion to Reconsider Contempt, pp. 2-3, ¶ 3]
- Lack of procedural due process. [Motion to Reconsider Contempt, pp. 3-4, ¶ 4-6]
- Set forth reasons why the order was clearly erroneous, arbitrary and capricious, and an abuse of discretion. [Motion to Reconsider Contempt, pp. 4-7, ¶¶ 7-18, 21-a-d]
- Disparate treatment due to race and sex. [Motion to Reconsider Contempt, p. 7, ¶¶ 19-20]
- Insufficient evidence and lack of probable cause. [Motion to Reconsider Contempt, p. 7, ¶ 21-e]
- Raised and preserved her federal constitutional challenge by averring her Rights Clause[10] in objection to the said Order holding her in contempt of court.

Slaughter's separate motions for reconsideration of the Orders dated June 27 and June 28, 1990 were simultaneously and summarily denied by Order dated December 27, 1990 (Appendix 7a). Significantly, the Supreme Court of Kentucky: **(a) did not** decide the case on the basis of the state constitution or a state statute, thus constituting *inadequate* and untenable state ground for the decision; and **(b) chose to evade** Slaughter's **persistently**

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[9] Lack of subject matter jurisdiction was raised in *Fritz v. Barker*, as explained in the PFR (pp. 8-9, ¶ 28; Appendix 42a-43a). This preserved Slaughter's right to renew such objection because it was not until October 9, 1990 that the Court separated and segregated the disciplinary portion of *Fritz v. Barker*.

[10] Citing the First, Fifth, Sixth, Ninth and Section 1 of the Fourteenth Amendments to the United States Constitution]. [Motion to Reconsider Contempt, pp. 8-9, ¶ 22]

asserted federal constitutional challenges to the Court's action at each phase of the show-cause proceeding.

Even if the court *had* articulated a state ground for their decision, review by the United States Supreme Court cannot be evaded by reliance on a state ground "so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the federal question." *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 164 (1917); *See also Eustis v. Bolles*, 150 U.S. 361, 370 (1893); *California v. Anderson*, 406 U.S. 958 (1972).

Disparate application of procedural rules inconsistent with earlier state court rulings and constituting avoidance of a decision relative to federal rights will not preclude Supreme Court review. *NAACP v. Alabama*, 357 U.S. 449, 457-458 (1958).[11] "We have often pointed out that state procedural requirements which are not strictly or regularly followed cannot deprive us of the right to review." *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964). Consequently, there is a presumption that federal ground [for the lower court decision] prevails. See *Michigan v. Long*, 463 U.S. 1032, 1037 n. 3 (1983).

Under the circumstances of the instant case, it is not essential that the state court's denial of the federal claims "shall have been put in direct terms," it being enough that "the necessary effect of the judgment has been to deny the claim." *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928). The state court's refusal or failure to articulate its denial of the federal claim is just as reviewable as an express decision on the point. See also *Chambers v. Mississippi*, 410 U.S. 284, 290 n. 3 (1970); *Street v. New York*, 394 U.S. 576, 581-585 (1969); *Martinez v. California*, 444 U.S. 277, 282-283 n. 6 (1980); *Cf. Bd. of Dirs. of Rotary*

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[11] See also, *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), [84-1601] Petition For Writ of Certiorari, p. 11, a recent case where the state court chose to evade the federal challenge but this Court invoked review anyway.

Int'l. v. Rotary Club, 481 U.S. 537, 544 n. 3 (1986); *Japan Line, Ltd. v. County of Los Angeles*, 441 U. S. 434, 441 (1979) [stating: "We have held consistently that **a state statute is sustained ... when a state court holds it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds.**"] [emphasis added]

The crucial consideration is that the record as a whole shows, both expressly and by clear intendment, that the federal claims were "brought to the attention of the state court with fair precision and in due time." *Bryant, supra*, at 67.

REASONS FOR GRANTING THE WRIT

1. The judgments of the Supreme Court of Kentucky are in conflict with its own prior holdings.

The record affirmatively shows that the Supreme Court of Kentucky disparately applied state rules of procedure as well as its own **precedent cases** relied upon and cited by Slaughter in her defense. Challenging the application of rules of procedure raises a substantial federal question. See *Monessen Southwestern Railway Company v. Gerald L. Morgan*, 486 U.S. 330 (1988).

The Court accused Slaughter of making "scurrilous" statements about Darsie [see footnote 6, *supra*] but the Court did **not** cite even one such instance **in the record**. On direct examination of attorney Slaughter, the Court raised the following issues on which attorney Slaughter was summarily denied discovery and compulsory attendance of witnesses: (1) Whether there existed judicial admissions by silence, (2) whether Barker and Darsie's conduct was "statutorily criminal" [criminal obstruction of justice], (3) whether Darsie and UK have a notorious reputation for perpetrating fraud upon various tribunals, (4) whether Darsie's certificate of service was falsified, and (5) whether Linda Haulk's affidavit was perjured **where the following facts appear affirmatively of record:**

- Darsie **backdated his certificate of service** and in order to

vindicate himself from appellant's charge that Darsie had falsified said certificate of service, Darsie submitted the **perjured affidavit**[12] of his employee, Linda Haulk [**"Response To Request"** (hereafter **"Response"**) pp. 2-4].

- Barker and Darsie ceased making further appearances (of record) after the documents they had filed actually incriminated themselves in a criminal conspiracy to obstruct justice, and the appellant so charged in his Statement of Appeal [Response, pp. 4-6].
- The language of CR 76.36(7)(h) [Appendix 60a] governing appeals to the Supreme Court is *mandatory* that a responsive brief **"shall** be filed" [Response, p. 9].
- The Clerk of the Court served notice on 10/10/88 that "Responsive briefs **shall** be filed in accordance with the provisions of CR 76.12(2)(A) AND (B)." [emphasis added; Appendix 58a-59a]
- No responsive brief was filed by Barker or Darsie [Response, p. 9]

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[12] Nine documents [discussed in Response, pp. 2-3] over which Slaughter and her client (Fritz) exercised **no** control in producing, established conclusively that Darsie falsified his certificate of service (PFR, Exhibit 8 and 9; at Appendix 55a-56a) in order to conceal ex parte communications with Judge Barker. Darsie did **not** respond that he had "inadvertently written March 28th instead of March 30th," on his certificate of service, but rather, Darsie **submitted the perjured affidavit** of Linda Haulk, stating that "upon receipt" [on 3/21/88] of *their copy* of *Fritz v. Barker*, Haulk had obtained certain telephonic information from the Court of Appeals Clerk's Office — an act which is impossible because the Clerk did **not** receive the Court's copy until 3/22/88 (proven by Clerk's official receipt notice)!! [Response, ¶¶ 2-5, pp. 3-4] By using the perjured affidavit, Darsie had hoped to establish that information he actually obtained from Judge Barker had been obtained from the Clerk of the Court of Appeals. This was relevant because Fritz was seeking the recusal of Barker due to such ex parte communications and prejudice.

- Under CR 8.04 [Appendix 58a]: "... Averments in a pleading to which a responsive pleading is required are **admitted when not denied** in the responsive pleading ..." [Response, p. 10]
- The controlling Kentucky law recognizes the doctrine of judicial admissions by silence. *Fisher v. Duckworth*, 738 S.W. 2d 810 (Ky. 1987)

The Court chose not to recognize the aforementioned **rules** of court **and** controlling **case law**, by which the judicial admissions of Darsie and Barker were established, constituting unconstitutional **disparate treatment** of attorney Slaughter as compared to other litigants similarly situated. **The Court also incorrectly wrote that** "Slaughter was accorded numerous opportunities to produce evidence in support of these allegations and failed to do so." [Appendix 5a] **In fact, the Court summarily denied Slaughter's request for discovery and compulsory attendance of witnesses** [Appendix 2a] and also had earlier denied Fritz' multiple requests for similar discovery in the underlying action.[13]

Likewise, the **controlling state law** regarding the procedural rights of persons charged with contempt **was not applied** to Slaughter, constituting unconstitutional **disparate treatment** as compared to other litigants similarly situated. The court cannot sanction an attorney unless **notice** *and* **an opportunity to be heard** is granted *IN RE: Larry H. Marshall*, 734 S. W. 2d 472 (Ky. 1987). Due process of law in a contempt proceeding includes **right to call witnesses, to be fully advised of the charges, to**

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[13] It has also been learned that UK officials altered its long distance phone bill "retention policy" to permit the destruction of the phone records that would have proved that Linda Haulk never phoned the Clerk's office on 3/21/88 as stated in her affidavit. Said phone records were destroyed with the approval of Darsie or his agents *while Fritz had a pending open records request* seeking long distance records (related to Haulk's affidavit stating that she had phoned Frankfort on 3/21/88). These are the same phone records Slaughter would have sought had the Court granted discovery and compulsory attendance of witnesses.

have reasonable opportunity to respond and assistance of counsel. *Hall v. Commonwealth*, 765 S. W. 2d 583 (Ky.App. 1988); *Campbell v. Schroering*, 763 S. W. 2d 145 (Ky.App. 1988).

2. The judgments of the Supreme Court of Kentucky conflict with controlling opinions of the U. S. Supreme Court.

In the instant case, attorney Slaughter was charged with indirect criminal contempt of court in retaliation for pursuing a constitutionally protected activity [filing a petition for writ of certiorari on behalf of her client[14] in the United States Supreme Court and reporting (under an affirmative duty to do so as a

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[14] On 9/26/89, on behalf of her client (John Fritz) Slaughter docketed a third petition for writ of certiorari in the U. S. Supreme Court [Case No. 89-5764] which set forth the unethical and unlawful conduct of Kentucky Chief Justice Stephens which tainted the lower proceedings. On 9/28/89, the Court Clerk entered a finality notice in the state proceeding, *Fritz v. Barker*. Only thereafter was Slaughter required to show-cause why she should not be held in contempt for *filing* Fritz's state *Petition For Rehearing*. But at the show-cause hearing, the lower Court itself cited Slaughter's U.S. Supreme Court petition for writ of cert., and statements therein about Stephens, as the reason for conducting the disciplinary proceeding, to wit: "...this entire document *[a state court petition for rehearing] together with certain other documents that appeared in the United States Supreme Court*, in which allegations were made concerning the Chief Justice of this Court [Robert F. Stephens], give a general tenor that this Court finds hard to explain, even in the position of advocacy that you find yourself in." [Opening remarks of Justice Gant, excerpted from the Dec. 12, 1989 show-cause hearing Transcript p. 4, Appendix 9a; emphasis added.] The First, Fifth and Fourteenth Amendments to the U. S. Constitution protects the filing of such petitions for writ of cert. A criminal conviction must be reversed where the court charges the commission of a crime by virtue of the defendant's having done a constitutionally protected act. *Eaton v. Tulsa*, 415 U. S. 697 (1974)

member of the state bar)[15] in state court, the fraud perpetrated against her client and the court by cronies of the state court].

The Order dated June 28, 1990 stated that it is an attorney's "duty to show absolute respect for the office of judge" citing *Roark v. King*, 696 S. W. 2d 787 (Ky. 1985), and applied it to Darsie, who is **not** a judge of *any* court, and to Barker, who is a **not** a judge of the court wherein the statements about Barker's *nonjudicial acts* were made. Thus, the "*Roark* principle" is unconstitutional as an overly broad, vague and arbitrarily capricious standard. The Court's decision is **clearly erroneous** and constitutes an **abuse of discretion**.

The Order characterized Slaughter's statements about Darsie and UK as "unsubstantiated character assassination," [Appendix 3a-5a, at 3a] after the Court denied discovery that would have corroborated the statements. The Court ***chose*** **to ignore** Darsie's judicial admission to criminal wrongdoing, his falsified certificate of service, use of Linda Haulk's perjured affidavit; and, newspaper articles about Darsie and UK's subornation of witnesses and malicious lies.[16] [Response, pp. 3-4, ¶¶ 5-11].

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[15] Kentucky Supreme Court Rule (SCR) 3.130 [Appendix 61a] adopted the *American Bar Association Code of Professional Responsibility and Judicial Conduct*, including therein Disciplinary Rules (DR) 1-103(A) and DR 7-102(B)(2) [Appendix 65a-66a] which impose an affirmative duty on an attorney to the report criminal misconduct of other attorneys and judges, and will be set forth verbatim in the petition for writ of cert.

[16] The community's newspaper, over which Slaughter exercised no control, exposed Darsie's reputation on the public record and dubbed him, "UK's enemy of daylight," stating that his actions in the Huber case were "inappropriate and perhaps even malicious," and that he fought to protect athletics boosters who "were caught cheating last time UK was put on probation by the [NCAA]." Scott Courts, a former UK basketball player was suborned to lie in order to help salvage the UK basketball program. UK itself was described as: "... the

(continued...)

The Court's further **expressed basis for *finding* Slaughter in contempt**, was: **(1)** "the overall tenor of the PFR," **(2)** Slaughter's written response to the show-cause order ["Objections in Response to Order to Show Cause"], **(3)** Slaughter's purported "lack of respect for the judiciary" *during the hearing*. [Appendix 3a-5a, at 4a] However, the hearing Transcript itself [Appendix 8a-34a] clearly shows that Slaughter was diplomatic and polite during the hearing, and **never** "disrespectful."

The charge that "the overall tenor of the PFR" was contemptuous is so overly broad and vague that it does not constitute the kind of reasonable, adequate or specific notice required for Due Process. The Court *never charged* Slaughter with filing a contemptuous written response to the show-cause order *nor* that her conduct at the hearing was contemptuous. [Appendix 1a and entire record] Slaughter never had an opportunity to defend such charges, constituting unconstitutional "*conviction upon a charge not made.*" *Eaton v. Tulsa*, 415 U.S. 697, 699 (1974)

The Order dated June 27, 1990 **summarily denied compulsory attendance of witnesses and discovery** to attorney Slaughter. "The summary denial of discovery infringes upon Ms. Slaughter's right to be heard in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Summary denial of discovery constitutes summary punishment which 'always, and rightly, is regarded with disfavor.' See *Taylor v. Hayes*[17], 418 US 488, (1974)" [quoting: Motion to Reconsider, pp. 1-2, ¶ 2]

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[16](...continued)

Twilight Zone of higher education ... where the quest for truth not only stops but goes into reverse." Darsie and UK never sued the newspaper and never claimed that he or UK was placed in a false light (citing: *Lexington Herald-Leader*, 4/24/88 p. E7; 4/25/88 p. A9; and 4/26/88 p. A9).

[17] An attorney contempt case on writ of certiorari to the then High Court of Kentucky.

"'[W]e have stated time and again that reasonable notice of a charge and an opportunity to be heard in defense before punishment is imposed are 'basic in our system of jurisprudence.' See *Taylor v. Hayes*, *supra*; *Groppi v. Leslie*, 404 U. S. 496, (1972)" [quoting: Motion to Reconsider, pp. 2, ¶ 3]

"The Order dated June 27, 1990 purports to deny the Motion for discovery on the grounds that, 'the show-cause order in question pertains solely to the PFR.' However, it was this Court [Kentucky Supreme Court] which placed the judicially admitted behavior and actions of John C. Darsie Jr., and George E. Barker IN ISSUE at the hearing. Discovery must be permitted as to a matter placed in issue on direct examination of Ms. Slaughter by this Court." [emphasis in original] [quoting: Motion to Reconsider, pp. 2-3, ¶ 6]

"...The Order denied Ms. Slaughter the right to defend herself by presenting evidence probative to the issues raised on direct examination by this Court. See U.S. Constitutional Amendments 1, 5, 6, 9, and 14." [quoting: Motion to Reconsider, p. 3, ¶ 7]

"A party must have an effective opportunity to defend himself by confronting any adverse witnesses, which includes the right to cross-examine the witnesses relied on. See *Goldberg v. Kelly*, 397 U. S. 254, (1970)" [Motion to Reconsider, p. 3, ¶ 8]

A criminal conviction must be reversed where the court charges the commission of a crime by virtue of the defendant's having done a constitutionally protected act. *Eaton v. Tulsa*, *supra*[18]

The United States Constitution entitles Slaughter to:

(a) Reasonable or specific notice of the charge and proposed sanctions, as required under the Fifth and Fourteenth Amendments.

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[18] *Eaton*, *supra*, was a criminal contempt case where conviction was based upon utterance of an expletive which was not directed at the judge or any court officer and did not impede the administration of justice. Due process was violated by "conviction upon a charge not made."

Taylor v. Hayes,[19] *supra*; *Groppi v. Leslie*, *supra*; (b) Compulsory attendance of material witnesses to enable her to present a defense, under the Sixth and Fourteenth Amendments. *RE: Petition for Green*, 369 U.S. 689, 691-692 (1962) [conviction of contempt of court without a proper hearing is unconstitutional] (c) An opportunity to be heard in defense before punishment is imposed. *Taylor v. Hayes*[20], *supra* (d) Due process and a fair and impartial hearing or trial [state supreme court justice's conflict of interest; bias of other justices]. *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813, (1986).[21]

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[19] "[W]e have stated time and again that reasonable notice of a charge and an opportunity to be heard in defense before punishment is imposed are 'basic in our system of jurisprudence.'" *Taylor v. Hayes, supra.*

[20] "Summary denial of discovery constitutes summary punishment which 'always, and rightly, is regarded with disfavor.'" In the instant case, summary denial of discovery infringes upon Slaughter's right to be heard in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

[21] *Aetna, supra* was vacated and remanded due to conflicts of interest of a state supreme court Justice. In the instant case, Kentucky Supreme Court Chief Justice Stephens is a voting member of the University of Kentucky (UK) Board of Trustees (real party of interest in *Fritz v. Barker*, the underlying action of IN RE: Gayle E. Slaughter from which the disciplinary proceeding arose) Stephens performed nine *judicial acts* (see argument no. 4, *infra*, p. 25) while pretending to have been recused, including signing the order denying Slaughter's stay. Stephens also personally instructed the Court Clerk on the conduct of *Fritz v. Barker* and received communications from the Clerk regarding Fritz's U.S. Supreme Court briefs immediately prior to initiation of the disciplinary proceeding brought against Fritz's attorney, Ms. Slaughter.

On December 14, 1990, UK cited the contempt finding against Slaughter as a reason for denying Fritz access to UK public records under KRS 61.872 (Kentucky's Open Records Act), thus proving that UK is the direct beneficiary of the contempt finding. Clearly, Stephens' direct, personal, substantial and

(continued...)

Such rights are so fundamental that it shocks the judicial conscience to witness them so deliberately abandoned by the Supreme Court of Kentucky as though merely clichés.

3. Certiorari will be attorney Slaughter's only opportunity to have her conviction for criminal indirect contempt of court reviewed because it originated in the Supreme Court of Kentucky.

During the hearing, the Supreme Court of Kentucky admitted that they did not have the record before them. The Court disclosed that when Slaughter incorporated material into her briefs, by reference,[22] no one bothered to even look at the material so incorporated.[23] Nor did the Court bother to do so during or after the hearing. The Court accused Slaughter of calling Darsie and Barker "criminals." [Transcript, at Appendix 9a-18a] The entire state record, including the Petition For Rehearing and the Transcript, proves that Slaughter never called anyone a "criminal" *or any other name*.[24] She merely used the only professional legal terminology available to describe the actions of Darsie and

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[21](...continued)
pecuniary interests in the outcome of the case, from the first order entered adversely to Fritz in *Fritz v. Barker*, all the way to the last two orders entered adversely in attorney Slaughter's disciplinary proceeding, violates the due process clause of the Fourteenth Amendment. *Aetna, supra*.

[22] Pursuant to CR 10.03, "statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion," including exhibits.

[23] "JUSTICE LEIBSON: ... We have the record on appeal. That's all we have. MS. SLAUGHTER: Well, we requested that the entire case record be certified, sent to the Court." [Transcript, pp. 24-25 at Appendix 20a-21a]

[24] Read the Petition For Rehearing, for which Slaughter was sanctioned for filing, at Appendix 35a-56a; and the Transcript at Appendix 8a-34a.

Barker as proven by objective documentary evidence. These facts appear affirmatively in the record and are not arguable.[25] The record itself, as well as Slaughter's diplomatic, diligent and thorough written responses entirely refuted such sham charges, but the Court still based their contempt finding upon said accusations. The Court's "***distorted fact finding***"[26] further substantiates that the charges against Slaughter were initiated in retaliation for pursuing a constitutionally protected activity.

Under the circumstances of the instant case, **the Supreme Court may reexamine a state court's findings and conclusions of fact:** (1) Where a federal right has been denied as a result of a finding shown by the record to be without sufficient evidence, *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and (2) "Where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts." *Fiske v. Kansas*, 274 U.S. 380, 385-386 (1927). *And see Creswill v. Knights of Pythias*, 225 U.S. 246, 261 (1912); *Sterling v. Constantin*, 287 U.S. 378, 398 (1932).

Under premise one above, where a state criminal conviction is based upon a record entirely devoid of any relevant evidence of

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[25] The proof included nine uncontroverted documents over which Slaughter and her client, Fritz, exercised no control in producing, establishing conclusively that Darsie falsified his certificate of service. To vindicate himself from appellant Fritz' charge that Darsie falsified said certificate of service, Darsie submitted the perjured affidavit of Linda Haulk, stating that "upon receipt" [on 3/21/88] of their copy of Fritz v. Barker, Haulk obtained certain telephonic information about Fritz v. Barker from the Court of Appeals Clerk's Office – which act was impossible because the Clerk did not receive the Court's copy of Fritz v. Barker until 3/22/88 (proven by the Clerk's official receipt notice)!! [Response, ¶¶ 2-5, pp. 3-4] See footnote 12, *supra*.

[26] See *Stein v. New York*, *infra*, p. 24.

a crucial element of the offense charged[27], the U. S. Supreme Court will examine the record independently, whatever the findings of fact in the state proceedings, in order to protect the constitutional principles at stake. *Thompson v. City of Louisville, supra*; *Vachon v. New Hampshire*, 414 U.S. 478 (1974); *Douglas v. Buder*, 412 U.S. 430 (1973).

Since the Fourteenth Amendment's Due Process Clause requires proof beyond a reasonable doubt of every fact necessary to constitute a state offense, *In re Winship*, 397 U.S. 358 (1970), the Supreme Court can go behind the state court fact findings to enforce said constitutional standard of proof. *See Jackson v. Virginia*,[28] 443 U.S. 307 (1979); *See also Pilon v. Bordenkircher*, 444 U.S. 1 (1979).

In particular, **under premise two above**, the Supreme Court has previously examined: **(a)** findings as to the falsity of testimony used to convict in a state court,[29] *Napue v. Illinois*, 360 U.S. 264, 271-272 (1959); **(b)** findings to support summary contempt convictions,[30] *See Codispott v. Pennsylvania*, 418 U.S. 506, 517 n. 6 (1974); **(c)** findings to support a state court conviction in the context of a claim that the activity involved a federally guaranteed

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[27] In the instant case, conviction for indirect criminal contempt of court **without the opportunity for compulsory attendance of witnesses** to obtain testimony and documents *probative to* **issues raised by the lower court.**

[28] In *Jackson, supra*, this Court reviewed the sufficiency of the evidence to decide if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

[29] In the instant case, the lower court refused to admit the clearly proven falsity of Darsie's certificate of service; his employee, Linda Haulk's, perjured affidavit; the truth of statements made by Slaughter that were purportedly contemptuous; and the very existence of Darsie and Barker's judicial admissions.

[30] In the instant case, the "findings" of the court are a *mere sham*, being clearly erroneous and devoid of supportive factual evidence and law.

constitutional right,[31] *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Cox v. Louisiana*, 379 U.S. 536, 545 n. 8 (1965); **(d)** findings as to alleged denials of political speech and freedom of association rights under the Constitution. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 915 n. 50 (1982).[32]

Under the circumstances cited above, the Supreme Court cannot be "completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by ***distorted fact finding***." *Stein v. New York*, 346 U.S. 156, 181 (1953).

4. The nine judicial acts of Chief Justice Stephens tainted the judgments of the Supreme Court of Kentucky

Certiorari is attorney Slaughter's only chance for review of a decision tainted by the *judicial acts* of a Justice who has direct, personal, substantial and pecuniary interests in the case, violating due process. *Aetna Life Ins. Co. v. Lavoie*, supra.[33] The following material facts show why Stephens' presence in the instant case rises to constitutional proportions analogous to *Aetna, ibid.*

Kentucky Supreme Court Chief Justice Stephens is a voting member of the UK Board of Trustees (real party in interest), yet in *Fritz v. Barker*, and in proceedings collateral thereto, Stephens

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[31] In the instant case the constitutionally protected activity is Slaughter's and Fritz' right to file a Petition For Writ of Certiorari in the U. S. Supreme Court under the First, Fifth and Fourteenth Amendments, *supra*.

[32] Here, the Supreme Court of Kentucky retaliated against Slaughter for making statements about Chief Justice Stephens in a Petition for Writ of Certiorari filed in the U. S. Supreme Court. See Appendix 9a ¶ 2, and *Statement of the Case*, supra, p. 4-5.

[33] *Aetna, supra*, was vacated and remanded due to conflicts of interest of a state supreme court Justice.

performed the following nine *judicial acts*, all of which directly benefitted UK, the real party in interest:

- 5/19/88, signed order, Case No. 88-SC-280-MR, *Fritz v. Barker*.
- 9/27/88, signed order, Case No. 88-SC-593 *Fritz v. Barker*..
- 10/07/88, personally instructed Clerk on the case.
- 11/15/88, signed order, Case No. 88-SC-593 *Fritz v. Barker*.
- 12/08/88, signed order, Case No. 88-SC-760-MR *Fritz v. Barker*.
- 6/29/89, signed order, Case No. 88-SC-760-MR *Fritz v. Barker*.
- 9/07/89, signed order, Case No. 88-SC-760-MR *Fritz v. Barker*.
- 12/27/90, signed order imposing fine, Case No. 90-SC-840-OA, *In RE: Gayle E. Slaughter*.
- 2/07/91, signed order denying stay, Case No. 90-SC-840-OA, *In RE: Gayle E. Slaughter*.

On October 7, 1988, Stephens *personally instructed* the Clerk of the Court, or his assistant, to send a letter to attorney Slaughter notifying her that Fritz had ten days from 10/7/88 in which to file their brief. In fact, had such advice been heeded, appellant's brief could have been summarily dismissed as untimely filed. The Clerk's docket sheet states: "** NOTE ** Per request of Chief Justice Stephens, letter sent to Hon. Slaughters [sic] notifying appellant they have 10 days from this date to file brief." [Item No. 010; p. 4; General Case Information Step Sheet; Case No. 88-SC-593, 10/07/88]

On October 10, 1988, the Clerk's office entered a deficiency order bearing the typewritten signature of "Robert F. Stephens," [and handwritten initials of "bjw," an assistant clerk], thus distinguishing it as a purely ministerial act of the clerk. Therefore, Stephens' personalized rubber-stamp signature appearing on the other orders listed above constitutes a personally

authorized signature of Stephens, unlike a purely ministerial act of the court clerk. The Attorney General's Office has argued[34] that Stephens' personalized rubber-stamp signature on various orders was performed in Stephens' "role as administrative officer of the Kentucky Supreme Court" and therefore "does not constitute significant involvement in the case." However, under Kentucky Constitution (KC) §§ 109 and 116 [Appendix 67a-68a] and SCR 1.020(1)(b) [Appendix 61a], the Chief Justice is the "*presiding officer of the court*" [emphasis added]. Under SCR 1.050 [Appendix 61a], the Administrative Office of the Courts is a separate entity from the office of Chief Justice. The administrative duties of Kentucky's Court of Justice are vested in the Administrative Office. Only a judicial officer can sign an order or authorize his signature to be placed thereon. No role as "administrative officer" exists for the Chief Justice when he places *or causes* his signature to be placed upon an order.

Under Kentucky law, "In legal contemplation the signing of an instrument means attaching a name *or causing it* to be attached by any of the known methods of impressing the name on paper with the intention of signing it. ... A rubber stamp impression may constitute a signature [citations omitted]." *Blackburn v. City of Paducah*, 441 S.W.2d 395 (Ky. 1969). Under SCR 1.020(1)(b) [Appendix 61a] Chief Justice Stephens is not permitted to sign any orders in cases where he has a conflict of interest, but he did so anyway in the instant case.

The Attorney General argued that on January 17, 1989, Stephens recused by way of letter[35] purportedly sent to Governor Wilkinson pursuant to KC § 110(3). Slaughter and her client first learned of the existence of said letter after receipt of Respondents'

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[34] *Fritz v. Barker*, (Case No. 89-5764) by letter from respondent adopting prior Briefs of Respondent in Opposition: *Fritz v. Barker* (Case Nos. 88-6785, and 88-6618, respectively, each at p. 4).

[35] Bearing Stephens' personalized rubber-stamp signature.

briefs filed in the U. S. Supreme Court on April 17, 1989. No where, at that time, did said purported recusal of Stephens appear in the clerk's official docket sheet. The proper way to effect recusal of the Chief Justice is by way of an entry in the record stating "Stephens, C.J., not sitting," ***together with*** the signature of an Acting Chief Justice, to wit, SCR 1.020(1)(b) stating, inter alia: "The Chief Justice is the presiding officer.... Whenever the Chief Justice is absent or otherwise unable to act, the remaining six members shall act for and in his behalf in the order of their seniority on the court *unless otherwise directed* **by** *the Chief Justice*. ..." [emphasis added] (Appendix 61a)

It is therefore apparent that the Chief Justice *himself directed* the remaining justices **not** to sit as acting justices on this case, because the orders bear Stephens' authorized signature, **not** the signature of another judge acting in his absence.

Also, under SCR 1.020(1)(b), **orders** bearing the signature of the Chief Justice **are signed in** his official **capacity as** the "*presiding officer of the court*," **not** in any purported "administrative role."

On October 23, 1989, John C. Scott, Clerk of the Supreme Court of Kentucky directed a copy of a letter[36] to "Hon. Robert F. Stephens." If Stephens had "no significant involvement" in these cases, or had recused as he asserted through the Attorney General, then there was no legitimate need to direct such correspondence to him on *Fritz v. Barker*.

Stephens' recusal was mandatory pursuant to the following rules of court which are completely set forth in the Appendix and it would be redundant to repeat them verbatim here: SCR 1.020(1)(b) requiring orders of the Court to be signed by an acting chief justice when the Chief Justice is disqualified; SCR 4.300 [Appendix 62a] requiring disqualification of any justice "in a

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[36] The letter was addressed to attorney Slaughter regarding transmittal of the state records to the clerk of the U. S. Supreme Court.

proceeding in which his impartiality might reasonably be questioned including ... any other interest that could be substantially affected by the outcome of the proceeding..." under Judicial Canon 3C(1)(c); 3C(2), 3C(3)(b) and 5D(1) [Appendix 63a-64a] respectively] **which bar Stephens from *even serving as a Trustee* on the UK Board of Trustees.**

The bias of the remaining justices was evidenced by: **(1)** the opening remarks of the purportedly Acting Chief Justice Gant, **(2)** lack of probable cause to conduct the hearing, **(3)** lack of subject matter jurisdiction, **(4)** allegations originated by members of the Court that *anything* Slaughter pleaded was scurrilous, **(5)** the overall disparate treatment of Slaughter as compared to other litigants similarly situated as to fact and law, and **(6)** persistent *avoidance* of her federal constitutional rights. Such bias constitutes evidence that Stephens' interests in the outcome of the proceeding were transferred to the remaining members of the Court.

On December 14, 1990, UK cited the contempt finding against Slaughter as a reason for denying Fritz access to UK public records under KRS 61.872 (Kentucky's Open Records Act), thus further substantiating that **UK is the direct beneficiary of the contempt finding.**[37] Clearly, **Stephens'** direct, personal, substantial and pecuniary[38] **interests in the outcome of the case,** from the first order entered adversely to Fritz in *Fritz v. Barker*, all the way to the last two orders entered adversely in attorney Slaughter's disciplinary proceeding, **violates the due process**

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[37] Letter from Jack Blanton, UK Vice Chancellor for Administration and Official Records Custodian, to Fritz which also cites the fact that Fritz exercised numerous other constitutionally protected activities (including: that he filed a lawsuit against UK; filed *Fritz v. Barker* in the Court of Appeals; reported the criminal acts of Darsie, Barker, Haulk, etc.) as the purported reasons for denying him access to UK's public records pursuant to his statutory right.

[38] Stephens is also a voting Trustee of UK, the real party of interest.

clause of the Fourteenth Amendment. *Aetna, supra.*

AMPLIFIED ARGUMENT FOR GRANTING CERTIORARI

This is a case of an attorney who "blew the whistle" on powerful cronies of the Kentucky judiciary. The Supreme Court of Kentucky brought criminal charges against attorney Slaughter in retaliation for her having pursued a constitutionally protected[39] activity -- filing a Petition for Writ of Certiorari containing truthful statements about the unlawful and unethical conduct of Kentucky Chief Justice Robert F. Stephens. The Court never gave attorney Slaughter reasonable, specific or adequate notice of what she was being charged with, nor has any order of the Court subsequently set forth what law, rule of court or legitimate ethical standard she was found guilty of violating.

At a hearing held on December 12, 1989, the Court placed certain matters in issue and then summarily denied Slaughter's motion for compulsory attendance of material witnesses and documents which would have provided Slaughter's defense. The Sixth and Fourteenth Amendment rights to compel the attendance of witnesses and documents in a criminal trial is so fundamental that it shocks the conscience to see them so deliberately abandoned by the Supreme Court of Kentucky.

The various orders entered by the Supreme Court of Kentucky contained distorted findings of fact (the Court chose to ignore judicial admissions made by silence regarding the proven criminal conduct of cronies of the state court; and ignored other facts). The Court disparately applied the statutes and rules of the Commonwealth of Kentucky to attorney Slaughter. For just one example, the court held that an attorney "must show absolute respect for the *office* of judge," and then applied this principle to Slaughter for truthful relevant statements made about Darsie, who is not a judge

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[39] Under the First, Fifth, Ninth, and Fourteenth Amendments.

of *any* court anywhere, and to Barker, who is **not** a judge of the court wherein his unethical conduct was reported in support of a Petition for Prohibition and/or Mandamus.

The use of the judicial machinery to impose criminal sanctions upon an attorney (who was fulfilling her affirmative **duty** to report the fraud of Darsie and Barker against her client and the courts) will have a chilling effect upon the rights of all citizens in the Commonwealth, making them and their counsel subject to the absolute whim of the court and all of its cronies. The instant case **was published** [Appendix 3a-5a] as a warning to all attorneys who dare speak the truth about those who control the Kentucky judiciary.

The U. S. Supreme Court has previously acknowledged that "...for good or for ill, [our Government] teaches the whole people by its example. ... Men born to freedom are naturally alert to repel invasion of their liberty by evil minded rulers." *Nat'l Treasury Employees Union*, et al., v. *William Von Raab*, 489 U.S. 656, 687 (1989).

Wherefore, for all of the foregoing, the order to show-cause and the show-cause proceeding itself were conducted in violation of the aforementioned constitutional rights of attorney Slaughter. The Supreme Court should review the judgment of the lower court to prevent serious erosion of federal constitutional rights and a grave miscarriage of justice.

RESPECTFULLY SUBMITTED,

GAYLE E. SLAUGHTER
Attorney At Law
145 West Main St. - 3rd Floor
Lexington, KY 40057
(606) 233-0132

APPENDIX

TO

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

[1]

SUPREME COURT OF KENTUCKY

88-SC-593-MR

JOHN FRITZ — APPELLANT

APPEAL FROM AN ORIGINAL ACTION

V. IN THE COURT OF APPEALS

88-CA-683-OA

GEORGE E. BARKER, JUDGE,
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE — APPELLEES

ORDER

On motion of this Court, appellant's counsel, Honorable Gayle E. Slaughter, shall appear before this Court on December 12, 1989 at 2:30 p.m. to show cause why she should not be held to be in contempt of this Court or sanctioned for the petition for rehearing she filed on behalf of appellant.

Gant, Lambert, Leibson, Vance and Wintersheimer, JJ., and Baird and Curry, Special Justices, sitting. All concur. Stephens, C.J., and Combs, J., not sitting.

ENTERED October 18, 1989.

/s/ William M. Gant
Acting Chief Justice

[1]

SUPREME COURT OF KENTUCKY

88-SC-593-MR

JOHN FRITZ — APPELLANT

APPEAL FROM AN ORIGINAL ACTION

V. — IN THE COURT OF APPEALS

88-CA-683-OA

GEORGE E. BARKER, JUDGE,
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE — APPELLEES

ORDER

The motion of counsel for appellant, Gayle E. Slaughter, for discovery is denied as the show-cause order in question pertains solely to the petition for rehearing contained in the record on appeal.

ENTERED June 27, 1990.

/s/ William M. Gant
Acting Chief Justice

[1]

TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

88-SC-593-MR

JOHN FRITZ — APPELLANT

APPEAL FROM AN ORIGINAL ACTION

V. IN THE COURT OF APPEALS

88-CA-683-OA

GEORGE E. BARKER, JUDGE,
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE — APPELLEES

OPINION AND ORDER

The action herein began as an original action in the Court of appeals in which judgment was entered July 19, 1988, refusing to issue a writ of prohibition and/or mandamus against appellees herein. On March 16, 1989, we entered a memorandum opinion affirming the Court of Appeals. A petition for rehearing was then filed by appellant and was subsequently denied by this Court's order entered September 28, 1989.

Because of the content of appellant's petition for rehearing, on October 18, 1989, this Court issued an order directing the signatory of the brief, Gayle E. Slaughter to appear on December 12, 1989, to show cause why she should not be held in contempt and sanctioned for the petition for rehearing she filed on behalf of the appellant. [2]

Following an in-depth consideration of the pleading in question, a careful reading of Ms. Slaughter's written response to the show cause order, her arguments at a hearing before this Court on December 12, 1989, and her supplemental response to this Court's request for information filed on February 20, 1990, we have no doubt that the petition for rehearing is, indeed, contemptuous and upon the facts and for the reasons hereinafter set

forth, we find her to be guilty of contempt of this Court and assess against her a fine of Five Hundred Dollars ($500.00) and direct that she pay the costs of this proceeding.

As this Court stated in Roark v. King, Ky., 696 S.W. 2d 787 (1985),

> (W)e will not burden this opinion and order with a lengthy discussion of the contemptuous material. Every member of this Court has been an active, practicing member of the Bar at one time in his career. All of us are aware of the role of an attorney as an advocate of his or her client's cause. By its very nature, a law suit is adversarial. Arguments should and must be made which not only express the client's position, but also point out alleged errors in court proceedings. But, as all attorneys know, there is a limit to the type of argument to be made. While an attorney may not respect the individual who sits on the bench it is his or absolute duty to show respect for the office of judge. If attorneys do not conduct themselves in such a manner, the reputation of the entire court system is in
>
> [3]
>
> jeopardy. The conduct of attorneys is, in these days and times, under more public scrutiny than ever before.

As was the case in Roark, supra, it is clear to this Court that appellant's petition for rehearing falls short of that standard demanded of attorneys.

In the petition for rehearing, Ms. Slaughter accused counsel, John Darsie, and circuit court judge, Honorable George E. Barker, of conduct rising to a level that is "statutorily criminal." The actions of the trial court stated to be with "actual malice and a retaliatory spirit" and Judge Barker's failure to respond to Ms. Slaughter's characterization was stated to constitute a "judicial admission of the truth of said allegations of criminal wrongdoing." Likewise, appellee Darsie's failure to respond to Ms. Slaughter's

allegations was deemed by her to be an admission of his perpetration of perjury and forgery.

Ms. Slaughter's unsubstantiated character assassination continued as she stated that it was both proven and undenied that Mr. Darsie and the Respondent real party in interests, the University of Kentucky, have a notorious reputation for perpetrating fraud upon various tribunals. Further, she claimed that as the guilt of these parties was apparent to her, they must provide evidence to refute her allegations. In other words, because Ms. Slaughter states what she believes the facts to be, any party so accused is bound by her characterization unless they are rebutted.

There are numerous other instances of accusatory, intemperate and unfounded statements in the petition. Ms.

[4]

Slaughter was accorded numerous opportunities to produce evidence in support of these allegations and failed to do so. The overall tenor of the petition for rehearing, Ms. Slaughter's written response to our show cause order and Ms. Slaughter's supplemental response to this Court's request for information clearly show that she does not understand her role as an advocate nor respect the role of the court as arbiter. This lack of respect for the judiciary was further evidenced at the hearing before this Court.

For these reasons, Gayle E. Slaughter, is held to be in contempt of this Court and we hereby assess against her a fine of five Hundred Dollars ($500.00) and direct that she pay the costs of this action.

Gant, Lambert, Leibson, and Wintersheimer, JJ., and Charles J. Baird and Charles W. Curry, Special Justices, sitting.

All concur. Stephens, C.J., and Combs, and Vance JJ., not sitting. ENTERED June 28, 1990.

/s/ William M. Gant
Acting Chief Justice

[copies to parties noted]

[1]

SUPREME COURT OF KENTUCKY

88-SC-593-MR

JOHN FRITZ — APPELLANT

APPEAL FROM AN ORIGINAL ACTION

V. IN THE COURT OF APPEALS

88-CA-683-OA

GEORGE E. BARKER, JUDGE,
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE — APPELLEES

ORDER

The motion and renewed motion of Honorable Gayle E. Slaughter to correct the case name/style regarding the Opinion and Order entered by this Court herein on June 28, 1990, is granted.

The motion of Honorable Gayle E. Slaughter to suspend the effectiveness of the Opinion and Order by this Court herein on June 28, 1990, pending disposition of Ms. Slaughter's motion to reconsider said Opinion and Order is granted.

Gant, Lambert, Leibson and Vance, JJ., sitting. All concur.

Stephens, C.J., Combs and Wintersheimer, JJ,. not sitting.

ENTERED October 9, 1990.

/s/ Roy N. Vance
Acting Chief Justice

[1]

SUPREME COURT OF KENTUCKY

90-SC-840-OA

IN RE: GAYLE E. SLAUGHTER
(Formerly styled John Fritz vs.
George E. Barker, et al
No. 88-SC-593-MR)

IN SUPREME COURT

ORDER

The motions filed by Gayle E. Slaughter, pro se, for this Court to reconsider, and/or grant a new trial, and/or alter, amend or vacate and/or to enter findings regarding its Opinion and Order dated June 28, 1990, are hereby denied.

The motion for this Court to reconsider its Order of June 27, 1990, is hereby denied.

Gant, Lambert, Leibson and Wintersheimer, JJ., and Special Justices Baird and Curry concur. Vance, J., dissents and states: "I did not sit upon the original determination of this matter. Upon consideration of the present motions, I would grant reconsideration of the entire issue."

ENTERED: December 27, 1990.

/s/ Robert Stephens
Chief Justice

[1]

COMMONWEALTH OF KENTUCKY
SUPREME COURT

RE: Show-Cause Hearing - Gayle Slaughter

APPEARANCES: Hon. Roy N. Vance, Hon. Charles Curry, Hon. Joseph Lambert, Hon. William Gant, Hon. Charles M. Leibson, Hon. Donald C. Wintersheimer, Hon. Charles Baird, Hon. Susan Clary Staff Attorney, Hon. Gayle E. Slaughter

[2]

COMMONWEALTH OF KENTUCKY
SUPREME COURT

RE: Gayle Slaughter

The above-styled matter came on to be heard on December 12, 1989 at 2:30 P.M. in the Supreme Court, at the Capitol, located at Frankfort, Kentucky.

[3]

JUSTICE GANT: This is a hearing for the Honorable Gayle E. Slaughter to appear and show cause why she should not be held in contempt by this Court or sanctioned for the Petition for Rehearing she filed on behalf of the appellant. Ms. Slaughter, I suppose you are--are you represented by counsel or are you going to represent yourself?

MS. SLAUGHTER: I'm going to represent myself, sir.

JUSTICE GANT: All right. Do you want to be sworn?

MS. SLAUGHTER: Yes.

JUSTICE GANT: Do you solemnly swear the testimony you're about to give on this occasion to be the truth, the whole truth and nothing but the truth, so help you God?

MS. SLAUGHTER: I do affirm.

JUSTICE GANT: All right. Now, Ms. Slaughter, there was a Petition for Rehearing filed in this Court on June 21st, 1989, in which several statements were made by you. I refer, in particular, to Paragraph 17 on

[4]

Page 5, alleging that this Court 'overlooked the material facts contained in the record which prove the conduct of George Barker arises--

JUSTICE CURRY: And John Darcy.

JUSTICE GANT --and John Darcy [sic] rises to a level that is statutorily criminal. To wit, the entire case records in Paragraph 3 above,' and so forth.

Then, on Paragraph 26, on Page 7, you have stated, 'in the record, it is both proven and undenied that Mr. Darcy [sic] and the respondent, real party in interest, the University of Kentucky, have a notorious reputation for perpetrating fraud upon various tribunals. To wit, affidavited [sic] and motioned [sic] for sanctions, Exhibit 9, located in the record on appeal.' and so forth.

And, this entire document[40] together with certain other documents that appeared in the *United States Supreme Court*, in which allegations were made concerning the Chief Justice of this Court[41] give a general tenor that this Court finds hard to explain, even in the position of advocacy that you find yourself in.

What is your answer to those accusations and comments contained in that Petition for Rehearing?

[5]

MS. SLAUGHTER: Shall I approach the podium?

JUSTICE GANT: Yes.

MS. SLAUGHTER: In all fairness, I am having a difficult time understanding just what the problem is. You say that these allegations provide a tenor that the Court finds hard to explain--my position of advocacy.

I would assert that all assertions are simply assertions of truth. And, I rest my case on that basis.

JUSTICE GANT: Are simply assertions of what?

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[40] Petition for Rehearing, Appendix 35a-56a.

[41] Robert F. Stephens.

MS. SLAUGHTER: Truth.
JUSTICE GANT: Assertions of truth. Would any member of the Court like to--
JUSTICE LAMBERT: Is it your view that it's a matter of accepted fact that John Darcy and the University of Kentucky have a notorious reputation for perpetrating fraud on various tribunals?
MS. SLAUGHTER: Well--

[6]

JUSTICE LAMBERT: And, if so, would you tell me what is your source for your information or for that assertion--of what appears to be an assertion of fact--in this brief?
MS. SLAUGHTER: Well, I would refer the quote to the Affidavit and Motion for Sanctions, Exhibit 9, located in the Record of Appeal, Pages 89 to 104 and Pages 158 to 167.
JUSTICE CURRY: Well, just tell us what's in that affidavit; who made it and what is in it?
MS. SLAUGHTER: The original record should be included--[aside to Mr. Fritz, (Do we have that?)]
MR. FRITZ: Yes.
MS. SLAUGHTER: We have the original record.
JUSTICE WINTERSHEIMER: Well, you're just going--you're going to stand on the record, then, is that right?
MS. SLAUGHTER: Yes, sir.
JUSTICE WINTERSHEIMER: All right.

[7]

MS. SLAUGHTER: I believe there was several articles that were included in there which--wherein those specific allegations were made that Mr. Darcy was an enemy of daylight, things of that nature. And, I'm not aware that he ever--
JUSTICE WINTERSHEIMER: I--what?
MS. SLAUGHTER: Pardon?
JUSTICE WINTERSHEIMER: I'm sorry, I didn't understand you.
MS. SLAUGHTER: That he was--it related to the handling of the

basketball scandal and his ability to have gotten several players to recant on statements they have made to the press.
JUSTICE LAMBERT: Is that relevant to this case; is there anything related to the basketball scandal in this case?
MS. SLAUGHTER: No, it reflects upon--
JUSTICE LAMBERT: It reflects upon his general reputation for being truthful/untruthful?

[8]

MS. SLAUGHTER: Yes.
JUSTICE LAMBERT: And, that's the--that was the way that was--
MS. SLAUGHTER: Yes, sir.
JUSTICE LAMBERT: --brought into this case?
MS. SLAUGHTER: Yes, it was, sir.
JUSTICE LEIBSON: Well, you say, on Page 17, 'this Court overlooked the material facts contained in the record which prove that the conduct of George E. Barker and John Darcy rises to a level that is statutorily criminal.' I assume that you are accusing--saying that there's something in this record that proves Barker and Darcy are criminals. Is that correct?
MS. SLAUGHTER: Well, allegations made, Your Honor--
JUSTICE LEIBSON: You say there's something in this record that proves they're criminals. What is in this record that proves that they're criminals? I am not going to look it up but I'd like you to tell me. I don't have the record in front of me.

[9]

MS. SLAUGHTER: Well, there are allegations that have been made which have been substantiated which go unrefuted--
JUSTICE LEIBSON: Well, what are they and what allegations were made by whom--
MS. SLAUGHTER: Well, I can read--
JUSTICE LEIBSON: --and what did they--
MS. SLAUGHTER: --I can read it to you, you know.
JUSTICE LAMBERT: Then, give us the source, also. If you

could, tell us and give us also the source of the allegations?
MS. SLAUGHTER: Well, I would have to just read to you the entire case record, beginning with the writ of prohibition or, actually, beginning with the Motion to Recuse filed by the pro se litigant.

I don't know if you gentlemen are aware of the facts contained in the records in the lower courts. I don't want to presume that you are but--it is there substantiated instance after instance. And, they go unrefuted.

[10]

For instance, it clearly shows that John Darcy represented to the Court that he had served a particular document on or about the 28th day of April. The cancelled postage clearly shows that it was not sent out until the 30th.

Now, he has not, in writing, provided the Court with any explanation of that deviation.
JUSTICE LAMBERT: I believe--
MS. SLAUGHTER: And, the Court concluded that he did not back-date it. But, the Court did not advise us in writing as to the basis of that finding. All that we could conclude is that you had what was in the written record. And, there was no refutation of that and no explanation of that discrepancy.
JUSTICE LAMBERT: I take it, you are referring to a certificate of service which shows the Certificate of Service dated the 28th day of March?
MS. SLAUGHTER: Yes, sir.
JUSTICE LAMBERT: And, then, attached to that is an envelope which states--shows mailing on the 30th of March?
MS. SLAUGHTER: Yes.

[11]

JUSTICE LAMBERT: Okay.
MS. SLAUGHTER: He certified that he mailed it on the 28th when, in fact, it wasn't mailed 'til the 30th. And, the point of that is, is that, on the 30th, the Honorable George Barker received

notice that the petition had filed--the appellant, excuse me--had filed his writ of prohibition on the basis of an informal pauperis motion. Mr. Darcy was not notified of that document being filed. It is a permissible conclusion to infer that the only way he could have known that it was filed was by communications with the Honorable George Barker.

Now, his assertion to the Court was that, upon receipt of the writ of prohibition, which was about fifty-four pages long, filed by the appellant pro se, that he had his secretary call here to the Clerk's Office; and that it was at that time that he became aware of the informal pauperis petition.

Now, I would submit to this Court that, if you were to look at the record, you would see that the Clerk's Office did not even receive their copy of the writ of prohibition for at least one day after the date that Mr. Darcy received his. Because, his

[12]

was hand-delivered to him at the University and the Clerk's Office's was put in the mail on that date. Now, there's no way he could have called the Clerk's Office and had them tell him this because they would not have yet received it.

Now, in responding to that in the affidavit that he submitted by his secretary stating that she did this, we requested this Court--or the lower Court--to allow discovery to compel him to produce his long distance carrier bill to prove that he had, in fact, made that phone call. The motion for discovery was overruled. Mr. Darcy has not, as of this date, provided any documentary evidence to--to support the veracity of the affidavit that he has submitted in the record.

JUSTICE LEIBSON: Is that your answer to 'what proves that his conduct was criminal?'

MS. SLAUGHTER: No, sir. I think I have replied that the affidavit in support of sanctions and the writ of prohibition all support those allegations. I was--

JUSTICE LEIBSON: What--

MS. SLAUGHTER: I was asked a question regarding whether or not--

[13]

JUSTICE LEIBSON: You're going too fast for me, please.
MS. SLAUGHTER: Pardon?
JUSTICE LEIBSON: You're going too fast for me. I'm trying to find out--
MS. SLAUGHTER: Well, I must admit that--
JUSTICE LEIBSON: Would you tell me where--I have the record here. Tell me what page to look on to prove that--that that proves that these people are criminals. That's all I'm trying to find out.
MS. SLAUGHTER: Well, it's illegal to form a conspiracy to violate an individual's right, due process rights, civil rights.
JUSTICE LEIBSON: Is there something in the record that proves he formed it? Is there some testimony that he formed such a conspiracy to violate--
MS. SLAUGHTER: Based upon the totality of the circumstances, the--it's clearly established. Mr. Fritz has been treated disparately throughout the entire

[14]

proceedings in the Sixth Circuit of the Fayette Circuit Court.
JUSTICE LEIBSON: Well, I'm back to asking the question about the page in the record. And, I haven't gotten an answer yet.
MS. SLAUGHTER: I'm sorry, sir. I thought I had cited that to you previously. Let me look that up again. You were referring to 26 on Page 7; is that correct?
JUSTICE LEIBSON: I'm looking--I'm looking on--well, all I am looking at is your--
JUSTICE GANT: Brief--petition.
JUSTICE LEIBSON: --your Petition for Rehearing bringing you here, which is the thing that we are dealing with, as far as I know today. I've tried to arrive at what we are dealing with. And, which we--well, you made some--what we would consider, and that's the reason we're here--scurrilous allegations, unless they are-

JUSTICE GANT: You said that 'the conduct of George Barker and John Darcy rises to a level that is statutorily

[15]

criminal.'

MS. SLAUGHTER: Yes, and I cited the sections of which I thought that it rose to.

JUSTICE LEIBSON: You cited the conduct--you cited the U.S. Code.

JUSTICE LAMBERT: What about what facts, is what we're trying to get at?

MS. SLAUGHTER: Well, they're outlined in the writ. They're outlined in the affidavits; they're undenied. They appear affirmatively on the record. They constitute judicial admissions of fact by virtue of going undenied.

JUSTICE GANT: Where are those?

MS. SLAUGHTER: They're in the record, as well. If you want some examples, to the best of my recollection--

JUSTICE LEIBSON: Yeah, we'd like something in the record that proves that these people are criminals. Or, and explain some allegation that you made that appear to us. And, all we're trying to do is to get Court proceedings to be conducted, you know, up to a--up

[16]

to an acceptable standard of decency, which, I think you would agree with, would you not?

MS. SLAUGHTER: Yes, sir. I would. That's what I'm trying to do, too.

JUSTICE LEIBSON: And, you wouldn't want anybody accusing you of being a criminal in a court proceeding.

MS. SLAUGHTER: If I was, in fact, a criminal, I--I may not appreciate it but I really couldn't, you know, deny it.

JUSTICE LEIBSON: Well, as far as I know, these people haven't admitted they are criminals.

MS. SLAUGHTER: Well, they–
JUSTICE LEIBSON: So, I–we have to presume they're not until somebody–either until they admit it or they're proved. Do we not?
MS. SLAUGHTER: Well, there were no responses filed to the Appeal or to the Petition for Rehearing.
JUSTICE LEIBSON: In other words, the unresponded charge that they

[17]

are criminals is sufficient?
MS. SLAUGHTER: Seems to me there's some–in the Rules, it states that 'allegations that go undenied shall be considered admitted.'
JUSTICE GANT: Ms. Slaughter, my memory of this–and stop me if I am wrong–is, this began as an action for Judge Barker to recuse himself from Mr. Fritz's trial. Is that correct?
MS. SLAUGHTER: These appellate procedures, yes, sir.
JUSTICE GANT: All right. And, all of these allegations about the University of Kentucky and Mr. Darcy and other people having a reputation for perpetrating frauds and these allegations that Mr. Barker's conduct and Mr. Darcy's conduct rose to the point of being statutorily criminal, it seems to me, have nothing to do with whether or not Judge Barker should have recused himself from the trial of the case.
MS. SLAUGHTER: Well, Your Honor–
JUSTICE GANT: And, all we're trying to say to you is that there are limits beyond which no lawyer should go. To

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drag in allegations of criminality, criminal conduct, call a person a criminal, accuse two people that are not even parties of interest of having a notorious reputation for perpetrating frauds, when all–what any of that has to do with one circuit judge recusing himself from the trial of a defendant, I–this Court has difficulty in explaining to itself. And, nothing that's been said here to this

point has explained it to me. Even if the record was replete with it, and which I don't find, I don't know what it has to do with the case before the Court.

MS. SLAUGHTER: Well, that's the essence of the problem here, is that there was an illegal conspiracy to obstruct justice. Now, I didn't write the laws. I can only make a fair application of the law to the facts.

JUSTICE LAMBERT: Have you made any sort of presentiment of those--of those allegations before a grand jury?

MS. SLAUGHTER: We have attempted to obtain some relief; but, no, we have not made those allegations to a grand jury. I have the responsibility, according to the Code of Professional Responsibility, to seek the legitimate means available to my client to protect his federal

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rights. If I don't raise these issues now, then I am forever precluded from raising them on behalf of my client; I subject myself to a malpractice case.

JUSTICE LAMBERT: It seems to me, though, if you're prepared--if you are prepared to allege in a pleading before this Court that two or more persons entered into some sort of criminal conspiracy, that you would have some duty to present those allegations and proof, if there is any, to an appropriate body.

MS. SLAUGHTER: Well, and I would agree. And, I believe that I've done that. Disciplinary Rule 101-103 requires a lawyer possessing unpriveleged [sic] knowledge of a violation of the Disciplinary Rule 1-102 shall report--

JUSTICE GANT: But, all you're doing is quoting rules and federal codes and U.S. codes and so forth. What we're talking about is in--where in this record is there any evidence that a grand jury returned an indictment against any of these people or any of these people were found guilty of a misdemeanor or a felony? I just--I can't get it.

MS. SLAUGHTER: Well, I'm not sure that that's a legitimate

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prerequisite to me making those allegations. What I am concerned with, also, is that none of these allegations have been refuted. None of them have been disproved.

JUSTICE LEIBSON: Well, if you call me a murderer, do I have to refute that? I mean, it seems to me that you ought to have some--

MS. SLAUGHTER: I wouldn't call--

JUSTICE LEIBSON: --that you have to prove it rather than me refute it. Isn't that the way the law runs?

MS. SLAUGHTER: Well, again, I'll read the entire record to you, all the affidavits--that constitutes facts.

JUSTICE LEIBSON: Well, I would just like to--I--read me one affidavit by some disinterested party that substantiates. I assume that you talk about a response from a party in interest. Is that Judge Barker?

MS. SLAUGHTER: Pardon?

JUSTICE LEIBSON: 26 says, in the record, 'it is both proven and undenied.' So, the first word you use is proven.

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'That Mr. Darcy and the respondent, real party in interest'--I assume you mean by--oh, no, you say the University of Kentucky--'have a notorious reputation for perpetrating fraud.' Is that referring to a basketball scandal; is that what that's referring to?

MS. SLAUGHTER: Yes, that's one instance. There are probably other instances.

JUSTICE LAMBERT: Well, do you know of others? Were you personally referring to other instances?

MS. SLAUGHTER: No, I was not.

JUSTICE LAMBERT: So, the only thing you were referring to there was the basketball instance?

MS. SLAUGHTER: Well, I think, if you will look at the exhibit, it would explain itself, now. And, I have offered to you all the opportunity to look at the entire record and Exhibit No. 9, located

in the record on appeal, Page--
JUSTICE LEIBSON: All right, I would like to look--well, what exhibit?

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JUSTICE GANT: That's that envelope, March the 31st?
JUSTICE LAMBERT: March 30th--the envelope's dated March the 30th, the Certificate of Service shows March 28th.
MS. SLAUGHTER: Pages 158 to 167.
JUSTICE LEIBSON: The record on appeal. Well, I've looked for that. Now, you tell me where--
JUSTICE LAMBERT: While we're talking about this, I have another question I wanted to ask you, too. In Numbered Paragraph 31, which appears on Page 9, you say, 'this Court'--and I assume you are referring to the Supreme Court of Kentucky--'has treated appellant disparately from all other litigants similarly situated in law and fact.' I don't see a record citation there.

It seems to me, Ms. Slaughter, that you have just made an un--an unrestrained attack on the integrity of virtually everybody you come in contact with. Is that a correct or an incorrect view of the situation?
MS. SLAUGHTER: Oh, that's very incorrect.

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JUSTICE LAMBERT: Well, tell me then--explain to me your reasoning by the remark in Numbered Paragraph 31.
MS. SLAUGHTER: In the appeal filed, we were attempting to have overturned the decision of the Court of Appeals which concluded that the appellant had failed to exhaust his administrative remedies to obtain the recusal of the sitting judge. I would submit that there is not anywhere any record of 26A.020 ever being applied as a remedy that had to be exhausted when an appellant or a litigant was seeking the recusal of a judge.
JUSTICE LEIBSON: Well, what you're suggesting is that our decision is wrong.
MS. SLAUGHTER: Clearly.

JUSTICE LEIBSON: Well.
MS. SLAUGHTER: And, that it treats disparately this client from any other litigant who may have petitioned or who may in the future petition this Court.
JUSTICE VANCE: What other client has petitioned that was treated

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differently from this one?
MS. SLAUGHTER: There are a couple of cases that we cited--there was an Attorney General's opinion which stated that 26A.015, which is the Section regarding disqualification of judges, should be applied in all cases that are in any stage of active litigation on or after March 19, 1977.

In an unrelated case decided the same day that this case was decided, on March the 16th, there was the case of Thompson versus Lappe--and I'm assuming it's Lappe, it may be Lap-Pe. It regarded a--
JUSTICE LEIBSON: Well, you're talking about a record--are you talking about a record that's before Judge Barker? Because, I've been busy trying to find what you keep telling me I should look at. And, I can't find it. If you--are you looking at it?
MS. SLAUGHTER: I'm just reading from the--I'm reading from the Petition for Rehearing. And, the Appeal--
JUSTICE LEIBSON: Okay. Well, there's nothing in there--we don't have the record that was before Judge Barker, if that's the pages you're talking about. We have the record on appeal. That's all we have.

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MS. SLAUGHTER: Well, we requested that the entire case record be certified, sent to the Court.

Then, in response to his question, on the same day that it was decided that 020 should have been pursued as an administrative remedy in a legal proceeding that has been pending for four years, this Court ruled on the very same day in the Thompson versus

Lappe case that 015 was the Section under which the judge should have recused.

JUSTICE CURRY: Well, don't you think there's a difference between the judge removing himself and the Court removing the judge? Isn't that the distinction between those two statutes?

MS. SLAUGHTER: I don't see that. I see 020 as being the Statute--excuse me, the statute or the Section--that becomes operative in instances where the judge has already recused. The first sentence of it says--

JUSTICE CURRY: Well, just--

MS. SLAUGHTER: --'when, from any cause, a sitting judge fails or is unable to--to sit'--

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JUSTICE LEIBSON: Well, your--if we've decided your case wrong, it won't be the first time. You understand that, don't you? And, if you sat on this Court, you might miss one, too. But, the point about it is we're talking about these allegations of--scurrilous allegations, in the Petition for Rehearing, against these parties. That's what we're having a--

MS. SLAUGHTER: Excuse me.

JUSTICE LEIBSON: --problem with. That's what we're here about today.

MS. SLAUGHTER: Excuse me. He asked me regarding the statement here in No. 31, I believe is the one he referenced. And, I mean, I can only answer--

JUSTICE LEIBSON: I know what he asked you about. I can hear all right.

My problem that I have is that I would like to get back to these scurrilous allegations. What is there in the record that proves there's anything to these scurrilous allegations or that they belong in this petition about whether Judge Barker should recuse himself? That's what--

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MS. SLAUGHTER: I don't have any problems in answering your

question. I thought I had already answered it. But, I would like to complete answering the question--
JUSTICE LEIBSON: Well, please, please, just out of sympathy to my ignorance, would you please try one more time to explain it to me so I can understand it?
MS. SLAUGHTER: You don't see any problem in, Your Honor, with a judge and an attorney engaging in ex parte communications without both parties being present?
JUSTICE LEIBSON: What is there--first of all, I would like to know what is in the record for us that shows that such a thing happened?
MS. SLAUGHTER: Well, there--
JUSTICE LEIBSON: Second of all, I would like to know what has that got to do, you know, with why we should grant this Petition for Rehearing? Now, I would agree that has a lot to do with it if you had--if you cited to the record about where these ex parte communications are proved. That would have a lot to do with

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it.

But, I am talking about labeling this thing 'statutorily criminal misconduct'. We don't have any kind of criminal misconduct in Kentucky; all crimes are statutory. You would agree with me about that. And, labeling the reputation of the people involved in here, why did that even belong in the brief? What has their reputation got to do with granting this Petition for Rehearing?
MS. SLAUGHTER: Well, it serves as you--this Court chose to address the merits of the appeal of the decision of the Court of Appeals, even though they didn't address the merits of the writ of prohibition. This Court chose to address it. And, the facts are misstated in the conclusion, in the opinion.
JUSTICE LEIBSON: Well, if you misstated the facts, you--
MS. SLAUGHTER: And, we--
JUSTICE LEIBSON: --if we misstated the facts in the opinion,

surely, you should point that out to us.
MS. SLAUGHTER: And, we did.

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JUDGE LEIBSON: But, what about the scurrilous language you used?
MS. SLAUGHTER: I don't agree that there's anything scurrilous. My understanding of it would be that it would be without any basis in fact or in truth.
JUSTICE LEIBSON: Okay. In other words, you don't have any citation to the record about--to back it up. You just tell us that their conduct is criminal and that they are notoriously thieves or whatever or liars or whatever?
MS. SLAUGHTER: Well, I didn't call them a thief.
JUSTICE CURRY: Perpetrate frauds.
JUSTICE LEIBSON: Fraud perpetrators, then?
MS. SLAUGHTER: Well, as I stated earlier, there was a serious problem with a certain affidavit that was filed with the Court. It was upon receipt of those documents that these allegations were even brought up. I have an affirmative obligation to preserve the claims of my client. If I had not brought this to your all's attention, I wouldn't have been able

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to have any review of it anyway. That's the reason why it was put in there; because it arose during these matters, dependency of the appeal.

And, I submit that, because you have concluded in your opinion that they're scurrilous, absent any response from the respondents, you know, I'm not going to agree with that until I am proven to just be totally in error. If I had anything from the other side proving to me that, hey, this Certificate of Service wasn't back-dated, that this affidavit of the employee of the University of Kentucky is fact legitimate; if I had received one thing that--
JUSTICE GANT: How is that employee of the University of Kentucky a party to an action to recuse a judge?

MS. SLAUGHTER: She submitted the affidavit--
JUSTICE GANT: What occasion does she have?
MS. SLAUGHTER: She submitted her affidavit in the record. Or, Mr. Darcy submitted it in his response. And, I would add that, since that response, there has not been any other--anything else from the other side. I don't know, you know, why they felt so confident

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that they could prevail without answering. I don't understand it.
JUSTICE CURRY: Are you saying that the difference in two days--between Monday, March 28th and Wednesday, the 30th--is that part of your evidence of fraud? Am I to understand that's why you're pointing that out? The Certificate of Service says the 28th and you have an envelope attached that appears to have a stamp of the 30th on it. Is that one of your supporting documents?
MS. SLAUGHTER: No, actually, the allegations of the fraud--well, yes, it is but the main allegations had already been made previous to this document being filed.
JUSTICE CURRY: But, that's the one you're referring to?
MS. SLAUGHTER: That's one of them. And, like I stated before--
JUSTICE LAMBERT: That's objective evidence, in your view, of fraudulent conduct?
MS. SLAUGHTER: Along with his reply. Along with his reply that he had telephoned the Clerk's Office and obtained the information that the writ of prohibition was

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filed in forma pauperis. And, I might add that the Petition to Proceed in Forma Pauperis was denied because he failed to give notice to the other side, notwithstanding the fact that that Certificate of Service is his objections to the Motion to Proceed in Forma Pauperis.
JUSTICE CURRY: Assuming that's true, how does that become criminal conduct?

MS. SLAUGHTER: Well, what it shows is, is that Mr. Darcy had no other way, it was our allegation, of knowing that the Petition--the Motion to Proceed in Forma Pauperis--had been filed but by communication with Judge Barker. And, this was stated by the appellant in his pro se response to those objections.

Now, Mr. Darcy's response wasn't that he made an error and wrote the 28th instead of the 30th. His response was that he had his secretary call the Clerk's Office the date that the petition was even filed which cannot be proven, which cannot be substantiated and which has not been substantiated.

And, it was in an effort to notify this Court that a fraud was being perpetrated on this Court, on the lower court, that these allegations were

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made. And, they further substantiated the initial allegations made in the writ of prohibition.

And, I just would like to add that it is not my goal to defame any person or to make scurrilous remarks against a person without regard to the facts. But, I do know that I have an obligation, both legally and morally, to speak for truth. And, that's all that I've done here.

JUSTICE CURRY: Don't you distinguish between guilt and accusations? I think, it seems to me, Miss, you've assumed guilt. Don't you, as a criminal attorney, make a distinction between, quote, guilt, and the belief that someone is presumed innocent and guilt is only a legal conclusion that is only reached after certain due process rights are afforded people accused of guilt?

MS. SLAUGHTER: In a criminal proceeding, yes, I do. I think that, when a person makes an allegation and they have not been discredited, there's nothing in the record to discredit that person, that it proves that the allegations are true.

JUSTICE CURRY: Well, then, aren't you sort of taking the position of judge and jury, then, for those

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accusations?
MS. SLAUGHTER: Not really. I asked this Court to make the final decision.
JUSTICE LAMBERT: It seems to me that you--you--it makes a lot of difference to you the fact that there was not a response filed denying the allegations in this Petition for Rehearing. Is--am I accurate in that?
MS. SLAUGHTER: Yes. Personally, had those accusations--
JUSTICE LAMBERT: You're aware, aren't you, that the filing of a response to a Petition for Rehearing is a discretionary matter? There's no requirement in the Rule.
MS. SLAUGHTER: There's none to the Appeal, either, though. There's none filed. And, the Order that was entered by this Court stated that--
JUSTICE LAMBERT: And, similarly, that's a discretionary matter, too, isn't it?
MS. SLAUGHTER: --'they shall file within'--

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JUSTICE LAMBERT: A party, a respondent, in those circumstances, may or may not, as his discretion indicates, file a response. But, you're asking us to conclude from their failure to file a response that they admit the connotations of your statement.
MS. SLAUGHTER: No, I'm asking you to conclude based upon what's on the record in front of you. And, if they choose not to file, then you have a right to consider that, too. But, obviously, it doesn't give you a whole lot to deal with from their perspective.

And, like I stated, I don't understand how they felt that they could prevail without a response.
JUSTICE LAMBERT: Did you write this Petition for Rehearing?
MS. SLAUGHTER: Yes, sir, I did write it and I signed it.
JUSTICE VANCE: You have not in here, in your petition, made any aspersions on the Court, this Court or any member of it or the Circuit Court?
MS. SLAUGHTER: It's not been my intention. All I can say is,

is that, as I was told when I was a child, if the truth hurts, if it offends you--this is what I was told--then I should examine myself and reform my

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actions and my attitudes in conformity with what is acceptable with truth and justice and righteousness. It is not my intention to defame, as I said before, any person at all. But, I think that it would benefit the entire Commonwealth--

JUSTICE LEIBSON: Well, you did defame them, unless these things are true, did you not?

MS. SLAUGHTER: Well, they've not denied them. I would defend the allegations to the end.

JUSTICE LEIBSON: So, the answer is that, if they are true--if they are true, it's not defamatory because truth is the defense. If they ain't true, it is defamatory. Isn't that about what it comes down to?

MS. SLAUGHTER: That's true.

JUSTICE LEIBSON: All right. But, you think the burden is on them to prove that is not true?

MS. SLAUGHTER: No, I didn't say that, either. But, I know personal!y--

JUSTICE LEIBSON: You think you have proved--you think that you

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have proved that it is true; is that--

MS. SLAUGHTER: Well, all I can go by is the affidavits and the allegations that we've asserted.

JUSTICE LEIBSON: But, we have--I have only this record in front of me. I don't know what affidavit--you keep talking about affidavits. I assume you're looking at some paper that I have not in my possession.

MS. SLAUGHTER: Well, I don't have the affidavit with me.

JUSTICE LEIBSON: Okay, well, I just wondered what papers we're looking at.

MS. SLAUGHTER: All I have is the Appeal--
JUSTICE LAMBERT: Just let me--this affidavit--is there more than one or are we talking about only one affidavit?
MS. SLAUGHTER: There are several affidavits in the record below.
JUSTICE LAMBERT: And, who are the affiants in those instruments?
MS. SLAUGHTER: The appellant, John Fritz, is the appellant--is the affiant.

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JUSTICE LAMBERT: In each of the affidavits you refer to?
MS. SLAUGHTER: Yes. There are no other parties for the appellant.
JUSTICE LAMBERT: No other testimony in the form of affidavits, apart from Mr. Fritz's?
MS. SLAUGHTER: That is correct.
JUSTICE LEIBSON: I sure wish you'd submit some copies of these affidavits for me to look at.
MS. SLAUGHTER: I don't have any problems with that, Your Honor.
JUSTICE LEIBSON: Well, thank you, I appreciate that you have no problem with it.
MS. SLAUGHTER: I mean I do, physically, today. But--
JUSTICE LEIBSON: Well, some time within the next--
MS. SLAUGHTER: I'll mail them out tomorrow.
JUSTICE LAMBERT: I take it we're talking about affidavits, though,

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that are part of a court record, not something that's in your office file?
MS. SLAUGHTER: Exactly. They're in the record.
JUSTICE LAMBERT: Okay.
JUSTICE LEIBSON: But, where is the record?
MS. SLAUGHTER: Pardon?

JUSTICE LEIBSON: Where is the record; in Fayette Circuit Court?

MS. SLAUGHTER: I have no idea. I've not seen the originals since they left my office. I'm not the custodian of them. They've not been returned to me. I presumed that you all were aware of all the underlying facts.

JUSTICE LEIBSON: Now, we're aware of any, you know, when a record is certified to us by the Clerk. In this case, it would be--says the original action of the Court of Appeals--the Clerk of the Court of Appeals, presumably, presented us with whatever had been filed in the Court of Appeals.

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MS. SLAUGHTER: Well, I'll take the time, at the conclusion of this hearing, to see exactly what's in the record.

JUSTICE LEIBSON: Well, as far as I know, this is it. What our Chief Staff Attorney has in front of her is it.

MS. SLAUGHTER: I haven't looked at that, either, sir.

JUSTICE GANT: Does anyone have any further questions?

Ms. Slaughter, do you have anything further you want to tell the Court?

MS. SLAUGHTER: Yes, I would, Your Honor. You know, actually, a Petition for Rehearing is filed in deference to the honor of the Court because the filing party thereby presumes that the opinion or Order which is sought to be reviewed was entered upon the Court's inadvertent error, due to having overlooked a material fact or of misconceiving an issue, rather than presuming that the opinion or order was entered deliberately to favor one party over the other.

I think that the choice of counsel for the appellee to not file a response is critical. I believe it constitutes judicial admissions of the facts that were raised in the Appeal and the

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Petition for Rehearing, notwithstanding that it was discretionary.

On a personal level, had I been faced with the same

allegations, I would have quickly sought to present whatever proof I could to exonerate myself, including presenting a long distance carrier bill, proving that I did in fact receive this information from the Clerk's Office.

The Code of Judicial Conduct requires the Court to allow Petitions for Rehearing to be filed. To wit, a judge should afford to every person who is legally interested in a proceeding or his lawyer full right to be heard according to the law. And, as I stated before, I have been diligent to fulfill my responsibilities to disclose information to the proper authorities. And, I've also represented my client within the bounds of the law. I put the Court on notice of several matters that clearly violate legal and ethical standards.

To wit, the Chief Justice has, in fact, entered his appearance in this action, notwithstanding the fact that the University of Kentucky is the real party in interest. And, he has entered his appearance by signing no less than six Orders in this action as well as in collateral proceedings. And, these Orders affected the substantive rights

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of the appellant. It is clearly a disqualification to serve as a trustee in any situation where the subject matter in controversy or a party to the proceeding could be substantially affected by the outcome of the proceeding. A judge should inform himself about his personal and fiduciary interests and avoid sitting on cases where clearly there is a conflict of interest.

All that we've sought is due consideration, is the right to equal protection for an arena in which he can receive redress of his grievances. That's all that the issue ever is. It's not anything personal. I don't even take this, necessarily, personal because all I've done is advocate for my client. And, as I stated before, I believe that what I've done and having the courage to come in and make statements which I knew would not be poplar--for so going is not a popular passtime [sic] sport. But, I know that it is for the best interests of the Commonwealth that we maintain integrity and

fairness and justice to all litigants, regardless of their economic status or their race.

JUSTICE GANT: Ms. Slaughter, every member of this Court agrees with you as to your feeling about maintaining the

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dignity of this Court and joins with you in--we recognize all of the rights that you have enumerated. I would only state that the method that you chose was what we were questioning and not your right to file these petitions.

MS. SLAUGHTER: Well, I wasn't--

JUSTICE GANT: And, the allegations that people are notoriously fraudulent and--based on an envelope date March the 30th; that's the only thing I've seen--and on some various laws and things of this nature are what we're here about. I would hope that--and I'm confident of the fact that you have the ability to phrase and draw a Petition for Rehearing that directs itself toward the purpose for which you are entering the Petition for Rehearing and not collateral matters that have no business in there; because they don't effect the validity of the original request to recuse a judge from the bench in any way, shape or form that this Court can see.

I understand what you have said here. I would appreciate it if you would get those affidavits to the Court. And, we will withhold any decision on this case until that is done. If you would like to look over the record that Susan has down here and

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compare that, they'll be available to you.

And, if there's nothing further--

JUSTICE LAMBERT: Well, I think that there ought to be a reasonable time. I mean, we don't want to leave this thing hanging forever.

JUSTICE GANT: No, we don't. Could you--I didn't set a time because you seem to have as little knowledge of where these affidavits are as we do. They may be in this record and you may be able to find them and get them today. But--and it is

Christmastime. Would ten days be a reasonable time for you to get these affidavits to the Court?

MS. SLAUGHTER: I don't see, you know, why that's not a reasonable time.

JUSTICE GANT: All right. If there's any reason that you can't comply with the ten-day request, if you will advise the Court, why, we will take it into consideration.

MS. SLAUGHTER: Well, then, if I'm not permitted to continue with my dialogue, I would like to tender to the Court a written response.

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JUSTICE LEIBSON: Okay, that's fine.

JUSTICE LAMBERT: It's been suggested--it's been suggested, Ms. Slaughter, that there be a certification from you that any affidavits you furnish this Court were, in fact, a part of the official court record in this proceeding in the Court of Appeals, as opposed to something from your court file. Would you have any problem with making a certification that the affidavits you refer to are part of the record on appeal?

MS. SLAUGHTER: If you want to order me to do that, I don't have any problems with that.

JUSTICE LAMBERT: I'm requesting that you certify, along with your--

MS. SLAUGHTER: Well, the only problem I have with it is that I trust that the documents that I send out are, in fact, filed. Now, if I go to my office--

JUSTICE LEIBSON: They're filed wherever you send them.

MS. SLAUGHTER: --and I filed them, then, you know, if they

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aren't in the record, then, what can I say?

JUSTICE CURRY: You refer several--

MS. CLARY: They're in another file is where they are.

JUSTICE LEIBSON: Our Staff Attorney suggests that perhaps they're in some other file, that you have more than one case up

here involving this subject matter and that they may be in some other file instead of in this file. And, that's why we might have this confusion.

MS. SLAUGHTER: That's very possible.

JUSTICE CURRY: You constantly incorporated things in reference in these briefs.

MS. SLAUGHTER: Yes.

JUSTICE CURRY: And, so, they're not automatically going over and taking out of one file and putting into this file simply because you say 'I hereby incorporate that by reference.' So--

MS. SLAUGHTER: Well, we requested that it be sent--I don't mean

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to interrupt, but--so that you'd have the opportunity to look at it.

JUSTICE GANT: All right. Court will stand adjourned 'til--what is the next hearing; three-thirty?

MS. CLARY: Tomorrow morning.

JUSTICE GANT: Tomorrow morning.

MS. CLARY: All rise. Court is adjourned 'till 9:00 A.M.

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STATE OF KENTUCKY)
) SCT.
COUNTY OF FRANKLIN)

I, Laura Malena, a Notary Public in and for the state and county aforesaid, do hereby certify that the foregoing testimony was taken by me at the time and place and for the purpose stated in the caption; that said testimony was first taken down by me in shorthand and later transcribed on the typewriter and that the foregoing Forty-Seven (47) pages of typewritten matter constitute a true and correct copy of all testimony taken down by me in the above styled cause of action.

I certify that the appearances are as listed on the first page of

Witness by hand and notarial seal this 10th day of February, 1990.

/s/ Laura Malena
Notary Public
State of Kentucky at Large

My commission expires: 4/20/93

[1]

SUPREME COURT OF KENTUCKY

88-SC-593-MR

JOHN FRITZ APPELLANT

APPELLANT'S
PETITION FOR REHEARING
CR 76.32 (a,b)

V. RE: MEMORANDUM OPINION OF THE COURT
ENTERED ON 3/16/89

ORIGINAL ACTION IN COURT OF APPEALS
88-CA-683-OA

GEORGE E. BARKER, JUDGE,
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE APPELLEES

* * * * * * * * * * *

COMES NOW the Appellant, John Fritz, by counsel, and petitions this court for rehearing of the issues presented in his Appeal of the July 19, 1988 Order of the Court of Appeals (RE: *Memorandum Opinion Of The Court*, entered on March 16, 1989, attached herewith as exhibit 1).

1. This request for a rehearing should be granted because it appears affirmatively in the record that this court overlooked one or more material facts in the record, or controlling statute(s) or decision(s), or has misconceived the issues presented on the appeal or the law applicable thereto, CR 76.32(b), *to wit*:
2. The court overlooked the following material facts in the record, or controlling statute(s) or decision(s), or has misconceived the issues presented on the appeal or the law applicable thereto, CR 76.32(b), *to wit*:
3. All facts and law cited by Appellant in all pleadings (containing said facts and law) in the following case records

are hereby realleged and

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incorporated herein by reference thereto as though set out in their entirety: Fritz v. Caldroney (86-CI-1005, Fayette Circuit Court); Fritz v. Barker (88-CA-683, Court of Appeals of Kentucky, pp 1- 172); Fritz v. Barker (88-SC-593, Supreme Court of Kentucky); Fritz v. Barker (88-SC-760, Supreme Court of Kentucky) and same are hereby placed squarely before this Court again, being entirely too lengthy to set out verbatim.

4. In affirming the Court of Appeals decision dated July 19, 1988, this Court has overlooked the title, spirit, purpose and legislative intent and practical application of KRS 26A.020 as cited in the Memorandum Opinion dated March 16, 1989. To isolate and apply only the second sentence of KRS 26A.020 without reference to the conditions embodied in the law itself, to wit: *KRS 26A.020 Designation of retired justice or judge as special judge*, attached herewith as exhibit 2 is a gross misconeption [sic] of the issues and law. After a judge is recused pursuant to KRS 26A.015, a litigant invokes KRS 26A.020 to effect the further recusal of a special judge appointed to fill the vacancy created by the first judge's recusal.
5. All of the relevant case citations cited in the "Notes To Decisions" annotations to KRS 26A.020 are incorporated herein by reference thereto as though set out in their entirety herein, to wit, exhibit 2. This court has never required any other litigant to "exhaust administrative remedies" using KRS 26A.020 after being denied relief under KRS 26A.015, to wit, exhibit 2.
6. According to the Opinion of the Attorney General (OAG) 77-232, KRS 26A.015 should be applied in cases that are in any stage of active litigation on and after March 19, 1977, to wit: OAG 77-232

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incorporated herein by reference thereto as though set out in its entirety herein.

7. *KRS 26A.015, Disqualification of justice or judge of the Court of Justice, or master commissioner*, is attached herewith as exhibit 3.
8. The 1988 Michie Cummulative Supplement to KRS 26A.015 and KRS 26A.020 is attached herewith as exhibit 4.
9. In an unrelated action (Thompson v. Lape, 88-SC-877-MR) to remove a judge on a particular case, the Attorney General of Kentucky filed a "Brief For Appellee Raymond E. Lape, Jr.", and on page three (attached herewith as exhibit 5) therein, cited KRS 26A.015 as the statute which controls recusal of judges. The brief does not state that Mr. Thompson must exhaust any purported "administrative remedies". This Court also cited KRS 26A.015 without reference to exhausting any purported "administrative remedies" under KRS 26A.020.
10. The Supreme Court of Kentucky accepted the brief cited in paragraph 9 hereinabove as citing the controlling law regarding recusal of judges. The Court's order dated March 16, 1989 (Thompson v. Lape, 88-SC-877-MR) does not state that Mr. Thompson had to exhaust any purported "administrative remedies" after proceeding under KRS 26A.015, to wit, exhibit 6, p. 2.
11. The Court has treated the Appellant, John Fritz, disparately from other litigants who proceeded under the statutes and decisions cited herein.
12. On page 2 of the 3/16/89 decision (Fritz v. Barker; 88-SC-593), the court asserts that when a judge refuses to recuse, KRS 26A.020 should then be used as an administrative remedy to attempt to effect recusal of a judge. The first sentence of KRS 26A.020 states:
"When, from any cause, a judge of any circuit or district court fails to attend, or being in attendance cannot

properly preside in

[4]

an action pending in the court, or if a vacancy occurs or exists in the office of circuit or district judge, the circuit clerk shall at once certify the facts to the chief justice who shall immediately designate a regular or retired justice or judge of the Court of Justice as special judge."

KRS 26A.020 does not state that it should be invoked if a judge fails to recuse, but rather is to be invoked *when a judge does recuse*! Quite obviously, KRS 26A.020 is an administrative procedure of the Court, but the doctrine of exhaustion of administrative relief has no relevancy to these proceedings.

13. In *Middle States Coal Co., Inc. v. Cornett*, Ky.App., 584 S.W.2d 593, *as modified*, 1979, the court applied KRS 26A.020 as an *alternate remedy* and not as a required "exhaustion of administrative remedy".

14. In *Gladish v. Gladish, Ky. App.*, 741 S.W.2d 658, 1988, the court wrote, inter alia:

"Likewise, Deborah's allegation that she was prejudiced by the ex parte communication between the appellee's counsel and trial court is untimely made. ... [Appellant] did not ask the trial judge to recuse himself or follow the procedures provided for in KRS 26A.020."

15. The court overlooked virtually all facts supporting recusal and does not discuss or refer to said facts or make findins [sic] relative to same in the decision dated 3/16/89. Appellant hereby realleges and incorporates herein by reference thereto, all facts and law, as stated in his original Motion for Writ of Prohibition and/or Mandamus and all subsequent pleadings (located in the record on appeal pp. 1-172).

16. The Opinion dated 3/16/89 summarizes that:

"appellant contends that Judge Barker accused him of

> making false statements in his Affidavit to support the motion for recusal. Judge Barker, in an Order denying appellant's motion, stated that allegations concerning his own personal bias and prejudice were false. Judge Barker's Order was not an accusation, merely a response to the Motion." (Opinion dated 3/16/89, pp. 2-3)

[5]

But, George Barker's Opinion and Order dated 3/29/87 (Fritz v. Caldroney, et. al., 86-CI-1005; Fayette Circuit Court - entire record hereby incorporated herein by reference thereto) more clearly supports appellant's contention than this Court cares to admit. Therein, Barker wrote, inter alia:

> "This Court further finds that the allegations to the contrary contained in Plaintiff's affidavit and memorandum are false and without any basis in fact." (see p. 3).

Barker's statement is much more than a response to the Motion; Barker entered a finding that appellant's allegations were false and such finding constitutes an accusation made against the Appellant. Barker also wrote that Appellant's pleadings were made, quote, "without reference to truth" (see p. 5 of Barker's Response and Memorandum, located at pp. 106-118 of the record on Appeal). The fact that Barker's statements are false themselves constitutes evidence of his hostility and bias against the Appellant. Not only are Appellant's facts correct and true, but, the truth of the statements of facts in the Appellant's various motions must be assumed to be true, for they cannot be traversed or tried by the judge, *Kentucky Journal Pub. Co. v. Gaines*, 110 S.W. 270, 271, Ct. App., 1908. Where Appellant's statements have not been impeached anywhere of record by either the respondents or the real parties in interest, this court has clearly overlooked material facts and misconceived the issues and law. Also, this Court has overlooked the material fact that the real

parties in interest have been impeached.

17. This Court also overlooked the material facts contained in the record which prove that the conduct of George E. Barker and John Darsie [6]
rises to a level that is statutorily criminal, to wit, the entire case records referenced in paragraph 3 hereinabove (*see* Title 18 U.S.C. Section 241; Title 18 U.S.C. Sections 1961-1968 [RICO]).

18. Actual malice and a retaliatory spirit against the Appellant appears on the face of the record where Judge George E. Barker suggested that contempt proceedings ought to be brought against the Appellant for no other reason than the fact that Appellant had sought Barker's recusal. Barker's suggestion was made by reference to an irrelevant and defunct statute (KRS 23.230) with Barker stating that such contempt proceedings were not allowed under KRS 26A.015.

19. This Court's holding that after Appellant requested certain depositions be sealed to protect confidential medical records, Appellant could not now complain that he has been denied the right to copy the deposition is clearly erroneous and ignores the facts and law of record. See Appellant's "Memo of Points of Authority", item #52, filed 12/29/86 at motion hour (placed officially in docket on 1/15/87) and attached herewith as exhibit 7. It is interesting that the highest Court in this state has no objections to a trial judge allowing defense counsel to have a copy of a deposition taken by a plaintiff while denying plaintiff the same opportunity. It is one thing to direct a clerk of a court to seal documents from the public and quite another to seal it from a party.

20. The Appellees did not respond to the Appeal (Supreme Court of Kentucky file no. 88-SC-593) nor did they deny any of the allegations made therein, thus constituting a

judicial admission of the truth of said allegations of criminal wrongdoing.

21. The Court overlooked the material fact that lack of discovery upon the

[7]

real party in interest regarding the issue of Linda Haulk's perjured affidavit should be resolved by the best evidence available.

22. The court also misconceived the issues and law when it failed to weigh Mr. Darsie's affidavits (and those from his agent, Linda Haulk) against the Appellees, particularly when:

23. Mr. Darsie certified to the Court of Appeals of Kentucky that his response to Appellant's motion to proceed in forma pauperis, quote, "...was served upon the petitioner by mailing same postage prepaid... on this 28th day of March, 1988", to wit - exhibit 8 attached herewith (located in the record on appeal pp. 13-15).

24. The envelop containing the response referenced in paragraph 23 hereinabove, was mailed postage prepaid on March 30, 1988, to wit: Exhibit 9 attached herewith (located in the record on appeal, pp. 89-104).

25. With what facts did this Court reconcile the glaring evidence referenced in paragraphs 23-24 hereinabove? Indeed, the record does show that Darsie back-dated his certificate of service, and allegations of Ms. Haulk's affidavit being perjured or forged go undenied. The court obviously overlooked the material fact that Mr. Darsie failed to produce the best evidence voluntarily to exonerate himself from the criminal charges (see the record on Appeal, pp. 120-124).

26. In the record, it is both *proven and undenied* that Mr. Darsie and the Respondent real party in interest, the University of Kentucky, have a notorious reputation for

perpetrating fraud upon various tribunals, to wit: Affidavit In Motion for Sanctions, Exhibit #9 (located in the record on appeal, pp. 89-104 and pp. 158-167).

[8]

27. Because Mr. Darsie's guilt appears on the very face of the record on appeal, the burden of going forward with evidence to refute the allegations of falsifying his certificate of service and submitting a perjured affidavit has shifted to the respondents. *Galloway Motor Co. v. Huffman's Adm'r*, 281 Ky. 841, 137 S.W.2d 379 (1939); *Duncan v. Clore*, 189 Ky. 132, 224 S.W. 678 (1920).

28. This Court also overlooked Appellant's collateral attack against the subject matter jurisdiction of this Appeal (see Motion to Reconsider a Judgment of the Supreme Court of Kentucky entered on 9/27/88, filed on or about 10/7/88). Said Motion to Reconsider is hereby readopted and realleged by reference thereto as if set out in its entirety herein. The fact remains that Appellant has a Motion To Proceed In Forma Pauperis tendered with a Motion To Reconsider still pending in the Court of Appeals (RE: July 19, 1988 Order of the Court of Appeals). Until same is disposed of by the Court of Appeals, the Supreme Court of Kentucky does not properly have the subject matter of this Appeal before it. This issue arose in the interim period of time between the date the Appeal was filed and the date it was decided. Time for filing this Appeal, to preserve the right to appeal, is not tolled by Appellant's filing of a Motion To Reconsider in the Court of Appeals. However, the pendency of such a motion does affect the jurisdiction of this Court. Deprivation of property or civil rights without due process of law (without adequate procedures) violates the Fifth and Fourteenth Amendments to the United States Constitution. *Daniels v. Williams*, 474 U.S. 327, 339,

106 S.Ct. 662, 679, 88 L.Ed.2d 662 (1986); *Farid v. Smith*, 850 F.2d 917, 924 (2d Cir., 1988) [citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102

[9]

S.Ct. 1148, 1153, 71 L.Ed.2d 265 (1982).

30. The decision of this Court is unsupported by the factual evidence of record, clearly erroneous, arbitrary and capricious, and constitutes an abuse of discretion.

31. On all matters raised hereinabove, and preserved by reallegation of all of the facts and law of record referenced in paragraph 3 hereinabove whether or not discussed individually in this petition for rehearing this Court has treated the Appellant disparately from other litigants similarly situated as to law and fact.

32. The decision of this Court dated March 16, 1989 renders KRS 26A.015, KRS 26A.020, Kentucky Constitution Sections 109, 111, 116 and 121 unconstitutional and invalid as applied and/or enforced by reason of repugnancy to (and in violation of) the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

33. The decision of this Court dated March 16, 1989 renders KRS 61.870 - 61.884, all Civil Rules cited in the body of the materials incorporated herein by reference (see paragraph 3 hereinabove) including but not limited to SCR 4 and subpart 4.3, CR 30.06, CR 11, CR 34, etc., unconstitutional and invalid as applied and/or enforced, by reason of repugnancy to (and in violation of) the First, Fifth, Ninth and Fourteenth Amendments to the United States Consitution [sic].

34. Constitutional Provisions Involved:

a) United States Constitution, Amendment I, inter alia:
"Congress shall make no law ... abridging the freedom of speech, ... or the right of the people ... to petition the

Government for a redress of grievances."

b) United States Constitution, Amendemnt [sic] V, inter alia:

[10]

"No person shall be ... deprived of life, liberty, or property, without due process of law..."

c) United States Constitution, Amendment IX, inter alia:
"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

d) United States Constitution, Amendment XIV, Section 1, inter alia:
"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WHEREFORE, Appellant respectfully requests:

a) That a rehearing be granted, and

b) That discovery upon the respondents and real-party in interest (including John Darsie, Gaye Elste Darsie, Linda Haulk, George E. Barker, Robert M. True and staff, etc.), be granted,

c) That the March 16, 1989 Memorandum Opinion of the Court be set aside and voided.

d) That a new Memorandum Opinion of this Court be issued, specifically addressing all facts, case law, and federal constitutional rights issues raised and preserved by the Appellant throughout this petition and the underlying actions.

e) That Appellant's motions at issue in this appeal all be granted.

f) Any and all other relief to which the Appellant appears entitled.

RESPECTFULLY SUBMITTED,
/s/ GAYLE E. SLAUGHTER
ATTORNEY FOR APPELLANT
[Address omitted here]

[APPENDIX to PFR]
[Exhibit 1, p. 1]

SUPREME COURT OF KENTUCKY
88-SC-593-MR

JOHN FRITZ — APPELLANT

ORIGINAL ACTION IN COURT OF APPEALS
V. 88-CA-683-OA

GEORGE E. BARKER, JUDGE
FAYETTE CIRCUIT COURT;
ROBERT M. TRUE, CLERK,
FAYETTE CIRCUIT COURT CLERK'S OFFICE APPELLEES

MEMORANDUM OPINION OF THE COURT
AFFIRMING

Appellant, John Fritz, is a plaintiff in a civil suit pending in Fayette Circuit Court. The defendants are University of Kentucky Medical Center physicians, employees and several departments. The Complaint alleges various causes of action such as invasion of privacy, intentional and negligent infliction of severe emotional distress, slander/defamation of character and wrongful discharge. During the pendency of this action, appellant, proceeding pro se, filed four motions each requesting presiding Judge George E. Barker to recuse himself. Each motion was in turn overruled.

Appellant then petitioned the Court of Appeals for a Writ of Prohibition [sic] and/or Mandamus. Sometime after petitioning for the Writ, appellant filed in the Court of Appeals for (1)

[Exhibit 1, p. 2]

Sanctions, (2) to Transfer the Record from Fayette Circuit Court to the Court of Appeals, (3) to Strike Judge Barker's Response to the Petition for Writ of Prohibition and (4) for Discovery. The Court of Appeals refused to issue the Writ and denied all Motions. This is an appeal as a matter of right. We affirm.

The reason given in the Court of Appeals' Order denying

petitioner's motions and writ of prohibition is that the "[p]etitioner has not exhausted his administrative remedy available for attempting to compel the judge to recuse himself. KRS 26A.020." We agree. KRS 26A.020 states:

> "If either party files with the circuit clerk his affidavit that the judge will not afford him a fair and impartial trial ... the circuit clerk shall at once certify the facts to the chief justice who shall immediately review the facts and determine whether to designate a ... special judge."

Citing KRS 26A.015, the petitioner filed his affidavit. But when the trial court refused to recuse, the petitioner failed to pursue the administrative remedies available to him under KRS 26A.020. It is the responsibility of the litigant to pursue this administrative remedy.

Nevertheless, there is no merit to the petitioner's motion to recuse. The trial court acted appropriately in the matter. This Court considered all of appellant's allegations but will specifically address four of the allegations in this Opinion.

First, appellant contends that Judge Barker accused him of making false statements in his Affidavit to support the motion for recusal. Judge Barker, in an Order denying appellant's motion, stated that allegations concerning his own personal bias and

[Exhibit 1, p. 3]

prejudice were false. Judge Barker's Order was not an accusation, merely a response to the Motion.

Next, appellant alleges that Judge Barker "in so many words" stated that he did not believe appellant had any cause of action against the defendants. "In so many words" suggests that appellant inferred this "expression of an opinion concerning the merits of the proceeding." KRS 26A.015(2)(a). It would require substantially more proof than this before deciding the allegation of wrongful conduct was sufficient.

Next, appellant maintains that Judge Barker acted in a

retaliatory manner by imposing Rule 11 sanctions. Appellant filed four motions with all four basically requesting the same relief, the Judge's recusal. Judge Barker's Rule 11 sanction merely struck plaintiff's pending motion and precluded him from filing more motions for the same relief. This was in no way retaliatory.

Appellant further contends that Judge Barker demonstrated his bias by denying appellant the right to copy the deposition of Dr. Munson. Dr. Munson was deposed by appellant. Appellant filed the motion requesting the depositions be sealed because the contained confidential physician/patient testimony. Judge Barker sustained the motion. Appellant has been granted the right to inspect the deposition in the presence of the circuit [sic] court clerk. After requesting the sealing, appellant cannot now complain that he has been denied the right to copy the deposition.

The denial of the motions by the Court of Appeals is affirmed. The decision was not clearly erroneous.

[Exhibit 1, p. 4]

Appellant filed a motion to impose sanctions on John C. Darsie, the defense attorney. Appellant alleged that Mr. Darsie backdated a certificate of service to hide "illicit ex parte communications" between Judge Barker and Mr. Darsie. The record does not show that Darsie backdated his certificate of service or that he was hiding anything. All other motions were made as peripheral to the Writ of Prohibition.

The Court of Appeals" denial of all motions and refusal to issue the Writ of Prohibition is affirmed.

Gant, Lambert, Leibson, Vance, Wintersheimer, JJ., and Charles Baird and Charles Curry, Special Justices, concur.

[Exhibit 1, p. 5]

[notes copies to the parties, not reproduced]

[Exhibit 2, p. 1]

26A.020. Designation of retired justice or judge as special

judge. – (1) When, from any cause, a judge of any circuit or district court fails to attend, or being in attendance cannot properly preside in an action pending in the court, or if a vacancy occurs or exists in the office of circuit or district judge, the circuit clerk shall at once certify the facts to the chief justice who shall immediately designate a regular or retired justice or judge of the Court of Justice as special judge. If either party files with the circuit clerk his affidavit that the judge will not afford him a fair and impartial trial, or will not impartially decide an application for a change of venue, the circuit clerk shall at once certify the facts to the chief justice who shall immediately review the facts and determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge. Any special judge so selected shall have all the powers and responsibilities of a regular judge of the court.

(2) A retired justice or judge serving as a special judge shall be compensated as provided by KRS 21A.110. (Enact. Acts 1976 (Ex. Sess.), ch. 22, § 5.)

Cited: Middle States Coal Co. v. Cornett, 584 S.W.2d 593 (Ky. App. 1978).

[Exhibit 2, p. 2-6]

[Annotated Notes to Decisions ... not reproduced]

[Exhibit 3, p. 1]

26A.015. Disqualification of justice or judge of the Court of Justice, or master commissioner. – (1) For the purposes of this section the following words or phrases shall have the meaning indicated:

(a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation; (b) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian;

(c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director,

adviser, or other active participant in the affairs of a party, except that:

1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest" only if the outcome of the proceeding could substantially affect the value of the interest;

2. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(2) Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:

(a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding;

(b) Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner or such lawyer has been a material witness concerning the matter in controversy;

(c) Where he knows that he, individually or as fiduciary, or his spouse or minor child residing in his household, has a pecuniary or proprietary interest in the subject matter in controversy or in a party to the proceeding;

(d) Where he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

[Exhibit 3, p. 2]

1. Is a party to the proceeding, or an officer, director, or trustee of a party;

2. Is acting as a lawyer in the proceeding and the

disqualification is not waived by stipulation of counsel in the proceeding filed therein;

3. Is known by the judge or master commissioner to have an interest that could be substantially affected by the outcome of the proceeding;

4. Is to the knowledge of the judge or master commissioner likely to be a material witness in the proceeding.

(e) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

(3)(a) Any justice or judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the chief justice.

(b) Any master commissioner disqualified under the provisions of this section or unable to discharge the duties of his office for any other reason shall be replaced by a special commissioner who shall be appointed by the judge of the court before whom the action is pending. The special commissioner shall meet the same qualifications as a master commissioner and shall take an oath and execute a bond as the regular commissioner is required to do. (Enact. Acts 1976 (Ex. Sess.), ch. 22, § 4; 1982, ch. 141 § 41, effective July 1, 1982.) [annotated notes not reproduced here]

[Exhibit 4, p. 1-2]

26A.015 Disqualification of justice or judge, etc.

[1988 Cumulative Supp. to KRS, containing only annotated notes, not reproduced]

[Exhibit 5, One page]

...Development Corporation, No. 87-CI-773. On August 24, 1988, Judge Lape entered an Order in the Kenton Circuit Court which is a final and appealable order pursuant to Rule 54 of the Kentucky Rules of Civil Procedure. Therefore, the Petition for a Writ of Mandamus relating to the civil action in Kenton Circuit Court is moot. Walton v. Bradley, Ky., 386 S.W.2d 457 (1965). Thompson could have addressed any error of law in that action by an appeal to the Court of Appeals from the Order of August 24,

1988. See Macklin v. Ryan, Ky., 672 S.W.2d 60 (1984).

II. JUDGE LAPE CANNOT ENTER ORDERS OF ANY TYPE IN THE TWO POLICE COURT OF APPEALS. As to the two Police Court appeals addressed by Thompson in the Petition for a Writ of Mandamus, Judge Lape has never been the judge of record in those cases. Moreover, Thompson states at page 8 of his "Statement of Appeal" that Judge Lape was the prosecuting attorney in the Covington Police Court in both those actions. As such, Judge Lape could not act as a judge on a later appeal from the Covington Police Court, but would instead have to recuse himself under KRS 26A.015. See Carter v. Commonwealth, Ky.App., 641 S.W.2d 758 (1982); Small v. Commonwealth, Ky.App., 617 S.W.2d 61 (1981). Therefore, the Court of Appeals correctly denied Thompson's Petition for a Writ of Mandamus relating to the two police court appeals.

[Exhibit 6, p. 1]

RENDERED: March 16, 1989
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY
88-SC-877-MR

EDDIE THOMPSON, JR. APPELLANT

ON REVIEW FROM COURT OF APPEALS
No. 88-CA-1782-OA

V. (Kenton Circuit Court #87-CI-773;
Covington Police Court #18227-A & B, and #17936)

RAYMOND E. LAPE, JUDGE
KENTON CIRCUIT COURT APPELLEE

MEMORANDUM OPINION OF THE COURT
AFFIRMING

Eddie Thompson, Jr., brings this appeal from an original action filed in the Court of Appeals where he sought a writ of mandamus to compel the appellee, Raymond E. Lape, Judge of the

Kenton Circuit Court, to enter final orders in three cases. The Court of Appeals denied appellant's petition, and we affirm the Court of Appeals.

The first case was a civil action brought by Thompson against the City of covington and others. Appellant has argued that no final order was entered. The record reveals otherwise. Appellee entered an order on April 13, 1988, which dismissed appellant's complaint for failure to state a cause of action. The order on its face was deemed final and appealable. Appellant filed a motion for rehearing which was orally overruled on May 2, 1988. A written order to that effect was entered on August 24, 1988.

[Exhibit 6, p. 2]

The other two cases were prosecutions against the appellant and one Patricia Thompson for violations of Covington's housing code. These cases were brought in the old Covington Police Court back in 1977. Appellee then was not the judge of that court, and subsequently has never been the judge of record in either of these cases. Appellee was, however, the prosecuting attorney in both of these cases and therefore would not have been qualified to enter any orders as circuit judge in later appeals, and is not now qualified to do so. KRS 26A.015(2)(b).

The order of the Court of Appeals denying appellant's petition for writ of mandamus is hereby affirmed.

All sitting. All concur.

[notes copies to appellants]

[Exhibit 7, p.1]

FAYETTE CIRCUIT COURT

6th Division

John Fritz — Plaintiff

vs. Memorandum of Points of Authority

Ralph D. Caldroney, M.D., et al — Defendants

* * * * *

The giving of testimony by deposition is not a privilege of the

witness, but the right, and in some cases the absolute right, of the party taking the deposition (26A CJS 290 sec. 3(b) and citing, inter alia: In re Abeles 12 Kan. 451; 33 Ky.L. 1062; Juster v. Grossman, 38 NW2d 832, 229 Minn 280)

In Kentucky, the right to take a deposition is an absolute right (Western Union Tel. Co. v. Williams 112 SW 651, 129 Ky. 515). Shepards Citations indicates that this case has been cited by courts in Delaware, Illinois and Oklahoma; this particular holding of Western Union Tel. Co. v. Williams has been cited in the following cases: 153 SW 210; 170 SW 190; 183 SW 240; and 190 SW 676.

A deposition SEALED by order of the Court should not be opened by the court clerk or by any other person except on a special order at the request of either party (26A CJS sec. 81 p. 421 citing: Sullivan v. Eddy, 45 NE 837, 164 Ill. 391; and Mumford v. Mumford, 13 R.I. 19.)

Where "publication" of a deposition consists of filing and opening the deposition, and is passed by consent or court order (26A CJS sec. 82 p 421), the plaintiff is not seeking a court order for such publication, but rather seeks permission to privately open, inspect and copy the deposition together

[Exhibit 7, p.2]

with its exhibits AND AFTER SAID opening, inspection and copying to have the deposition <u>resealed</u> to protect the privacy issue already ruled on by this court.

In the original plaintiff's motion to SEAL the said deposition, the condition was set that neither party would be deprived of the right to access the deposition; either party is entitled to use a valid and competent deposition which has been filed in the cause (In re Soeder's Estate 220 NE2d 547, 7 Ohio App.2d 271; Holliday v. Jones, App., 84 NE2d 602). Other courts citing the holding in re Soder's Estate include: District of Columbia, Idaho, Illinois, Iowa and Texas according to Shepard's citations. It is pertinent that the Ohio case is in the Sixth Judicial District.

While there is authority to the effect that the party on whose behalf depositions were taken (i.e., here, the plaintiff) is under no obligation to exhibit them to the adverse party (Lord v. Bishop, 16 Vt. 110 cited in 26A CJS sec. 82 p 421) or to submit them to his inspection (Troup v. Haight, 6 Johns. Ch. 335, as cited in 26A CJS sec. 82 p.421), the plaintiff is placed in the unusual position of having to petition the court to obtain a copy of the official deposition transcript only because it was sealed to protect the plaintiff's privacy and because the counsel for defendants control the deposition as a result of an arrangement to accommodate both the plaintiff's lack of funds to hire a court reporter and the defense counsel's demand for a court reporter. This results in defendant's counsel controlling the deposition which is basically the plaintiff's deposition.

[Exhibit 7, p. 3]

Parties should, upon request, exhibit depositions to opposing counsel, and if he declines, an order to file them may be obtained (26A CJS sec 82, p. 421 citing: Rand v. Dodge, 17N.H. 343); in the instant case, plaintiff was able to persuade opposing counsel to file the deposition without having to resort to a Motion to File and plaintiff now requests permission to privately open, inspect and copy the depositions because they are SEALED by order of the court; were they not so sealed, it may well be that anyone (including any Party to the action) could copy them at cost upon inspection of public court records.

To deprive plaintiff of inexpensive copies of the official deposition transcript would preempt the doctrine of stare decisis in that other courts in the Sixth Judicial District have ruled that statutes or procedural rules relating to discovery procedures should be liberally construed in favor of disclosure (23 AmJur2d footnote 19, p. 337 citing: Southeastern Fleet Leasing Inc. v. Gentry, 57 Tenn. App. 162, 416 SW2d 773; State ex rel. Pack v. W.Tenn. Distributing Co., 58 Tenn App 306, 430 SW2d 355) AND that the purpose of discovery is to aid a party in preparing

and presenting his case or his defense by enabling him to ascertain facts, etc...(23 AmJur2d p. 335 footnote 2 citing Maddox v. Grauman (Ky.) 265 SW2d 939). To withhold inexpensive copies of the official court record would deprive plaintiff of effective representation.

The purpose of filing/notice of depositions and of making them available to opposing counsel is to avoid surprise at trial (26A CJS sec. 98, p. 454) and because the court should rule on objections to depositions before the depositions are admitted in evidence (26A CJS sec. 99, p. 454) plaintiff has a legitimate need for a copy of the official transcript. Any party, including the one taking the deposition may enter objections (26A CJS sec. 100, p.455).

[Exhibit 7, p. 4]

Case annotations, 26A C.J.S. Depositions § 92(2) p. 439, not reproduced here.

[Exhibit 7, p. 5]

Case annotations, 26A C.J.S. Depositions § 92(2) Pocket Supplement p. 439, not reproduced here.

[Exhibit 8 (One Page)]

CERTIFICATE

This is to certify that a true copy of the foregoing Response was served upon the petitioner by mailing same postage prepaid to John Fritz, 262 Kalmia Avenue, No. 12, Lexington, Kentucky, 40508; and upon the co-respondents by mailing same postage prepaid to Hon. George E. Barker, Judge, Fayette Circuit Court, Fayette County Courthouse, Lexington, Kentucky, 40507 and Hon. Robert E. True, Clerk, Fayette Circuit Court, Fayette County Courthouse, Lexington, Kentucky 40507, on this the 28th day of March, 1988. /s/ John Darsie

[Exhibit 9 (One Page)[42]

Office of Legal Counsel
Administration Building
University of Kentucky
Lexington, KY 40506-0032

LEXINGTON, KY.
MAR30'88
PRESORTEDU.S.POSTAGE
FIRST-CLASS 0.35

Mr. John Fritz
262 Kalmia Avenue, No. 12
Lexington, Kentucky 40508

---

[42] This exhibit is the envelope in which Darsie mailed his falsified certificate of service. The envelope indicates it was metered and mailed on 3/30/88, not 3/28/88 as stated in Darsie's certificate of service (Exhibit 8, above at Appendix 55a). The false date of mailing was crucial in Darsie's effort to conceal his ex parte communications with Judge Barker. See footnote 12, p. 14; footnote 25, p. 22; footnote 29, p. 23, *supra*.

John C. Scott Office of the Clerk Room 209
Clerk SUPREME COURT OF KENTUCKY (502)
State Capitol Frankfort, 40601 564-4720

10/10/88

GAYLE E. SLAUGHTER
145 WEST MAIN STREET
LEXINGTON

JOHN FRITZ APPELLANTS
V.
GEORGE E BARKER
JUDGE FAYETTE CIRCUIT COURT
ROBERT M TRUE
CLERK FAYETTE CIRCUIT COURT APPELLEES
FILE NUMBER : 88-SC-000593

PURSUANT TO CR 76.36(7), THE ABOVE-STYLED HAS BEEN DOCKETED AS OF THIS DATE.

RESPONSIVE BRIEFS SHALL BE FILED IN ACCORDANCE WITH THE PROVISIONS OF CR 76.12(2)(A) AND (B).

SINCERELY,
JOHN C [sic] SCOTT,
CLERK

/s/ Betty Whitton

WHEN FILING PAPERS, USE THE ABOVE STYLE OF CASE AND FILE NUMBER
CC:
GEORGE BARKER
FILE COPY

Kentucky Rules of Court, 1989 Edition
Rules of Civil Procedure
[27][43]

Rule 8.04 Effect of Failure to Deny

Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Averments in a pleading to which a responsive pleading, except that the following allegations must be proved:

a. Those against a person under any disability.

b. Those necessary to sustain an action for divorce.

c. Those concerning value or amount of damages which are not for a sum certain which may by computation be made certain.

[Amended effective April 1, 1963; January 1, 1978.]

Source: FRCP 8(d); CC 126; KRS 403.025, 403.030.

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Rule 75.07 Record to Be Prepared and Transmitted by Clerk

(5) If the appeal is to the Court of Appeals or Supreme Court, the clerk of the circuit court shall immediately notify the clerk of the appellate court when the record has been completed and certified as required by this Rule, and shall simultaneously serve copies of such notification upon all parties to the appeal. Such notification shall indicate the names of counsel for the appellant. The clerk shall enter the fact and date of such notification in the docket of the case, and the date of such docket entry shall govern the time allowed by Rule 76.04 for perfecting the appeal.

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Rule 76.12 Briefs

(1) When required. Unless otherwise directed by the appellate court, before any appeal is taken under submission for final disposition on the merits briefs shall be filed by the respective

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[43] Cross reference to the page number on which this Rule appears in *Kentucky Rules of Court*, 1989 Edition, West Publishing Co., St. Paul, Minn.

parties in support of and opposition to the granting of the relief. An appellant or cross-appellant may file a reply brief. No further briefs will be considered without leave of court. The combining of arguments on an appeal and cross-appeal into one brief is both permitted and encouraged. Should the appellant or appellants fail to file a brief, no brief shall be required of the appellee or appellees unless so ordered by the court.

(2) Time for Filing.

(a) *Civil Cases*. In civil cases the appellant's brief shall be filed with the clerk of the appellate court within 30 days after the date of the notation on the docket of the notification required by Rule 75.07(5). The appellee's brief (or combined briefs, if he is a cross-appellant) shall be so filed within 30 days after the date on which appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due unless the appellant is also a cross-appellee, in which event he may file a combined brief within 30 days after the date on which the last appellee's brief was filed or due. When a discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be

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filed shall be computed from the date of entry of the order granting review.

(b) *Criminal Cases*. The time in which briefs are required to be filed in criminal cases shall be the same as in civil cases except as follows: (i) If counsel for the appellant is the Public Defender of the Commonwealth, the appellant's brief shall be filed within 30 days after the date on which the record on appeal was received by the clerk of the appellate court; and (ii) If counsel for the appellant is someone other than the Public Defender of the Commonwealth the appellee's brief shall be filed within 30 days after the date on which the record on appeal was received by the clerk of the appellate court, whichever is the later.

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Rule 76.32 Petitions for Rehearing

(1) When Authorized.

(a) A party adversely affected by an opinion of the Supreme Court or Court of Appeals in an appeal case may petition the Court for (i) a rehearing or (ii) a modification or extension of the opinion, or both, and the opposing party may file a response. When final disposition of an appeal is made by an order, or an "opinion and order," the party adversely affected may move for a reconsideration as provided by Rule 76.38(2), but a petition for rehearing is not authorized.

(b) Except in extraordinary cases when justice demands it, a petition for rehearing shall be limited to a consideration of the issues argued on the appeal and will be granted only when it appears that the court has overlooked a material fact in the record, or a controlling statute or decision, or has misconceived the issues presented on the appeal or the applicable law thereto.

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Rule 76.36 Original Proceedings in Appellate Court

(7) Appeals to Supreme Court

(h) Briefs in response to an appeal or cross-appeal shall be required. Such appeals shall be filed in accord with the provisions of CR 76.12(2)(a) and (b).

Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing shall serve notice on the real party in interest as defined in this Rule, Section (8), who shall then be required to file a brief on behalf of the judge against whom the appeal or cross-appeal is taken; provided, however, no attorney shall be required or permitted to file such a brief where to do so would conflict with the interest of his client.

Kentucky Rules of Court, 1989 Edition
Rules of The Supreme Court
[318]

RULE 1.020 THE SUPREME COURT

(1) Conduct of Business.

(b) *The Chief Justice*. The Chief Justice shall be the presiding officer of the court. Orders of the court shall be signed by the Chief Justice or one of its members acting on his behalf, unless otherwise provided by these Rules. Whenever the Chief Justice is absent or otherwise unable to act, the remaining six members shall act for and in his behalf in the order of their seniority on the court unless otherwise directed by the Chief Justice. Members whose terms of service are equal shall have precedence according to seniority in age.

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RULE 1.050 THE ADMINISTRATIVE OFFICE OF THE COURTS

(1) The Administrative Office of the Courts shall act as the administrative and fiscal agency of the Court of Justice. Policies and procedures developed by the Administrative Office of the Courts and issued by it with the approval of the Supreme Court shall have the same effect as if issued by the Supreme Court.

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RULE 3.130 ABA CODES OF PROFESSIONAL RESPONSIBILITY AND JUDICIAL CONDUCT RECOGNIZED AS AUTHORITY

(1) Except for Ethical Considerations and Disciplinary Rules in conflict with Rule 3.135, the Court recognizes and accepts the principles embodied in the American Bar Association's Code of Professional Responsibility as a sound statement of the standards of professional conduct required of members of the bar, and the Inquiry Tribunal may cause to be tried all charges brought under this Code as well as charges for other unprofessional or unethical conduct tending to bring the bench and bar into disrepute.

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RULE 4.300 CODE OF JUDICIAL CONDUCT

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

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CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lens the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A Judge Should Perform the Duties of His Office Impartiality and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties the following standards apply:

A. Adjudicative Responsibilities.

(4) A judge should accord to every person who is legally

interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

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C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to a proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For purposes of this section :

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;...

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize Risks of Conflict of Interest with His Judicial Duties

D. Fiduciary Activities. A Judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with

whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

ABA CODE OF PROFESSIONAL RESPONSIBILITY AND JUDICIAL CONDUCT

[V2:KY:1][43]

DR 1-102 Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1-103 Disclosure of Information to Authorities.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

[V2:KY:10]

DR 7-101 Representing a Client Zealously.

A. A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

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[43] Three-part page identifier appearing in the *National Reporter on Legal Ethics and Professional Responsibility*, which reprinted *The Code of Professional Responsibility, Kentucky*.

[V2:KY:11]

DR 7-102 Representing a Client Within the Bounds of the Law.

(B) A lawyer who receives information clearly establishing that :

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

[V2:KY:14]

DR 8-101 Actions as a Public Official

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

CONSTITUTION OF KENTUCKY
THE JUDICIAL DEPARTMENT
[333][44]

§ 109. The judicial power - Unified system - Impeachment.- The judicial power of the commonwealth shall be invested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration. The impeachment powers of the general assembly shall remain inviolate.

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THE COURT OF APPEALS

§111. Composition - Jurisdiction - Administration - Panels.

(1) The Court of Appeals shall consist initially of fourteen judges, an equal number to be selected from each Supreme Court district. The number of judges thereafter shall be determined from time to time by the general assembly upon certification of necessity by the Supreme Court.

(2) The Court of Appeals shall have appellate jurisdiction only, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the commonwealth, and it may issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause within its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction as provided by law.

(3) The judges of the Court of Appeals shall elect one of their number to serve as chief judge for a term of four years. The chief judge shall exercise such authority and perform such duties in the

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[44] Cross reference to page number in *Kentucky Revised Statutes, Official Edition, Volume 1, Constitutions*; The Michie Company, Charlottesville, VA.

administration of the Court of Appeals as are prescribed in this section or as may be prescribed by the Supreme Court.

(4) The Court of Appeals shall divided itself into panels of not less than three judges. A panel may decide a cause by the concurring vote of a majority of its judges. The chief judge shall make assignments of judges to panels. The Court of Appeals shall prescribe the times and places in the commonwealth at which each panel shall sit.

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§ 116. Rules governing jurisdiction, personnel, procedure, bar membership. - The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

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§ 121. Retirement and removal. - Subject to rules of procedure to be established by the Supreme Court, and after notice and hearing, any justice of the Supreme Court or judge of the Court of Appeals, Circuit Court or District Court may be retired for disability or suspended without pay or removed for good cause by a commission composed of one judge of the Court of Appeals, selected by that court, one circuit judge and one district judge selected by a majority vote of the circuit judges and district judges, respectively, one member of the bar appointed by its governing body, and two persons, not members of the bench or bar, appointed by the governor. The commission shall be a state body whose members shall hold office for four-year terms. Its actions shall be subject to judicial review by the Supreme Court.